# 2012

## CUMULATIVE SUPPLEMENT

TO

# MISSISSIPPI CODE

## 1972 ANNOTATED

**Issued September, 2012**

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2012 REGULAR SESSION

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SUPPLEMENTING

# Volume 13A

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## User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

# PUBLISHER'S FOREWORD

**Statutes**

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

**Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

**Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

**Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

**Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

**Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

**Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

**Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012 LexisNexis

# SCHEDULE OF NEW SECTIONS

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# MISSISSIPPI CODE 1972

*ANNOTATED*

## VOLUME THIRTEEN A

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## TITLE 59

## PORTS, HARBORS, LANDINGS AND WATERCRAFT



### CHAPTER 1

### Harbor or Port Commissions; Powers of Political Subdivision; Pilotage



### § 59-1-3. Appointment, oath, bond, and terms of office of members of commission.

The port commission provided for in Section 59-1-1 shall be appointed as follows: one (1) shall be appointed by the Governor who shall be skilled and experienced in maritime affairs; one (1) shall be appointed by the board of supervisors of the county in which such port of entry is located, who shall be skilled and experienced in maritime affairs, and three (3) shall be appointed by the mayor and board of aldermen or mayor and board of commissioners of the city where such port of entry is located, one (1) of whom shall be skilled and experienced in maritime affairs. Before entering upon the duties of the office, each of said commissioners shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, and shall give bond to be approved by the clerk of the city in which the port of entry is located, in a sum not less than Fifty Thousand Dollars ($50,000.00), conditioned upon the faithful performance of their duties. Said bond shall be

made payable to the city in which the port of entry is located, and in case of breach thereof, suit may be brought on the relation of the city for the benefit of said commission. The commissioners shall hold office for a term of four (4) years from the day of their appointment and qualification, and until their successor or successors shall be appointed and qualify as set out herein.

**SOURCES: Codes, 1930, § 4850; 1942, § 7547; Laws, 2009, ch. 467, § 21, eff from and after July 1, 2009.**

**Amendment Notes** — The 2009 amendment substituted "not less than Fifty Thousand Dollars ($50,000.00)" for "of five thousand ($5,000.00) dollars" in the second-to-last sentence.

## § 59-1-17. Jurisdiction of commission; reclamation, use and disposition of lands subject to commission jurisdiction generally; leasing and subleasing of certain submerged lands and tidelands owned by state.

(1) The several port commissions in the State of Mississippi are each hereby vested with full jurisdiction and control of any and all lands lying within, or adjacent to, any river, bay or natural lake which are now, or heretofore were, below the mean high tide mark, and which lands lie within or adjacent to any port or harbor within the jurisdiction of such port commission, and as to which lands the claims of private persons or private corporations have been, or hereinafter are, acquired by such port commission, or by the city for its benefit, by purchase, lease, conveyance or eminent domain proceedings. Any such port commission is hereby authorized to reclaim any and all such lands, by filling, dredging or other methods and to utilize, lease or dispose of same for the development and operation of the port to the same extent it is now, or may hereinafter be, authorized to utilize its other facilities.

(2) It is hereby declared that the leasing or use for commercial purposes, port purposes and for industrial development related thereto of the following described submerged lands and tidelands belonging to the State of Mississippi in an area lying between the East Pascagoula River and the West Pascagoula River, Jackson County, Mississippi, will serve a higher public interest in accordance with the purposes of this section and with the public policy of this state as set forth in Section 49-27-3, said property being more particularly described as follows:

All that part of the Lowry Island Resurvey, which is bounded on the South by the L&N (now CSX) Railroad Track; on the East by the East Pascagoula River; on the West by the West Pascagoula River; and on the North by the North corporate limits of the City of Pascagoula and the South corporate limits of the City of Moss Point, LESS AND EXCEPT, however, that part of said property now owned by any private corporations.

(3) The governing authority of the city in which such state lands are located is hereby authorized to apply for and secure a lease in accordance with Section 29-1-107, except for a period of not to exceed forty (40) years, of such

state lands as may be necessary for the development for commercial purposes, port purposes and related industrial facilities in the aforesaid areas described in subsection (2) hereof.

Application for a lease shall be made with the Secretary of State.

Utilization of any and all submerged land and/or tideland shall be in such a manner so as not to obstruct normal navigation of any normal and natural channel. Title to the property shall remain vested in the State of Mississippi.

All oil, gas and other minerals in, on or under said lands leased are hereby specifically reserved unto the State of Mississippi.

The city governing authority is hereby authorized to sublease such lands for commercial purposes, port purposes and for industrial development related thereto.

All subleases executed by the city governing authority shall be on such terms and conditions, and with such safeguards, as will best promote and protect the public interest. Such subleases shall be submitted to the Secretary of State for approval. Each sublease shall provide that if such property is not utilized within five (5) years, or if commercial, port or industrial usage ceases and such termination continues for a period of two (2) years, the sublease shall terminate and all rights thereunder shall revert to the city. If such nonutilization for a period of five (5) years or cessation of use for a period of two (2) years shall be caused, suspended, delayed or interrupted by act of God, fire, war, rebellion, scarcity of water, insurrection, riot, strike, scarcity of labor, differences with employees, failure of a carrier to transport or furnish facilities for transportation; or as a result of some order, rule or regulation of any federal, state, municipality or other governmental agency; or as the result of failure of the sublessee to obtain any required permit or certificate; or as the result of any cause whatsoever beyond the control of sublessee, the time of such delay or interruption shall not be counted against the sublessee in determining such period of five (5) years or two (2) years. All subleases shall be for a fair and adequate consideration and the compensation and revenues therefrom shall be retained by the state.

(4)(a) It is further declared that it will serve a higher public interest in accordance with the purposes of this section and with the public policy of the state as set forth in Section 49-27-3 for the following parcels of the Lowry Island Resurvey to be subleased for the purpose of developing multiunit residential structures, height not exceeding fifty (50) feet, that are an integral part of a public marina: (i) that parcel consisting of existing filled tidelands or fastlands lying immediately adjacent to the East Pascagoula River and north right-of-way boundary of U.S. Highway 90; and (ii) that parcel consisting of existing filled tidelands or fastlands lying immediately adjacent to the West Pascagoula River and north right-of-way boundary of U.S. Highway 90.

(b) The governing authority of the city in which are located the parcels described in this subsection may sublease such parcels for such residential development upon the same terms and conditions prescribed in subsection (3).

(5) This section is to be considered as supplementary and cumulative and nothing in this section shall be construed as repealing or amending any options, leases, deeds, contracts, agreements or legal instruments heretofore entered into by the governing authorities of the municipality in which the port of entry is located, or the port commission.

**SOURCES: Codes, 1942, § 7549.7-01; Laws, 1950, ch. 450, § 1; Laws, 1988, ch. 336; Laws, 2008, ch. 460, § 1, eff from and after July 1, 2008.**

**Amendment Notes** — The 2008 amendment deleted references to "city port commission" throughout; added (4); redesignated former (4) as present (5); and made minor stylistic changes.

## CHAPTER 5

## State Ports and Harbors



### § 59-5-1. Short title; definition of "board".

This chapter may be cited as the "State Ports and Harbors Law."

As used in this chapter the word "board" shall mean the Mississippi Development Authority.

**SOURCES: Codes, 1942, § 7564-01; Laws, 1958, ch. 365, § 1; Laws, 2012, ch. 485, § 4, eff from and after passage (approved Apr. 26, 2012.)**

**Amendment Notes** — The 2012 amendment substituted "Mississippi Development Authority" for "Mississippi Agricultural and Industrial Board."

### § 59-5-11. General powers of board; lands subject to jurisdiction and control of board.

**SOURCES: Codes, 1942, § 7564-04; Laws, 1958, ch. 365, § 4; Laws, 1960, ch. 342, § 1; Laws, 1967, Ex. Sess. ch. 7, § 1; brought forward without change, Laws, 2008, ch. 544, § 3, eff from and after passage (approved May 9, 2008.)**

**Editor's Note** — This section was brought forward without change by Laws of 2008, ch. 544, § 3, effective from and after passage (approved May 9, 2008). Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2008 amendment brought the section forward without change.

## § 59-5-29. Increase in membership of county port authority upon issuance of bonds.

Whenever any bonds of the State of Mississippi have been issued as provided in Sections 59-5-23 and 59-5-25, and where the authorized port or harbor agency is a county port authority organized as provided by Sections 59-9-1 through 59-9-85, the membership of such county port authority shall be increased by two members, to be appointed by the governor who shall be qualified electors of the county, and whose term shall be concurrent with that of the appointing governor. One such member shall be appointed by the governor from the county at large, and the other such member shall be appointed from a municipality located on the navigable channel or waterway on which the port facilities are located, but which municipality shall not be the county seat of such county. The two additional members hereby authorized to be appointed to such county port authority shall be vested with all the rights and duties and powers as members thereof, but such appointments shall be made to such county port authority and shall continue only so long as any such state bonds shall be outstanding and unpaid. The members of such county port authority appointed by the governor under the authority of this section shall make bond and qualify as members of such port authority in the same manner provided by law for the other members of such county port authority, and as provided in this chapter.

**SOURCES: Codes, 1942, § 7564-08; Laws, 1958, ch. 365, § 8; Laws, 1960, ch. 342, § 2; ch. 347.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fourth line of this section. The reference to "Sections 59-9-1 though 59-9-75" was changed to "Sections 59-9-1 through 59-9-85." The Joint Committee ratified the correction at its August 5, 2008 meeting.

## § 59-5-37. Employment of personnel, execution of contracts, etc., for development, promotion, maintenance, etc., of ports, harbors, rivers, etc.; suits by and against state port authority; advertising and bidding requirements for contracts or purchases; use of design-build method of contracting [Subsection (3) repealed effective July 1, 2013].

(1) The board or State Port Authority, in the performance of its duties, may employ such personnel and make all contracts and purchases incidental to or necessary for the advancement, promotion, development, establishment, insurance, maintenance, repair, improvement and operation of any ports, harbors, rivers, channels and waterways including, if required for its protection, retirement benefits, workers' compensation insurance and other em-

ployee benefits for the benefit of any employees of the board or State Port Authority. The board or State Port Authority may establish a trade development and promotion account to pay all direct and necessary expenses for the promotion and development of the state port. The authority is granted the power to sue and be sued in its own name.

(2)(a) The board or State Port Authority may, in its discretion, make such contracts or purchases according to the state purchasing laws. Contracts let for any port, harbor, river, channel or waterway improvements shall be advertised as required by law for the letting of public contracts, and such contracts shall be awarded to the lowest and best bidder who shall make bond as shall be required by the board or State Port Authority conditioned for the faithful prosecution and completion of work according to such contracts, such bond to be furnished by a corporate surety company qualified to do business in this state. However, the board may negotiate and enter into contracts with responsible lessees for the construction of facilities by lessees, such as those referred to in Section 59-5-11, and the acquisition thereof by the board upon such terms and conditions and for such amount as may be approved by the board.

(b) The State Port Authority shall be considered to be a "governing authority" under the state public purchasing laws as that term is defined in Section 31-7-1 and used in Sections 31-7-1 through 31-7-73, and shall not be subject to the jurisdiction of the Department of Finance and Administration, the Public Procurement Review Board or the Bureau of Building, Grounds and Real Property Management under the provisions of Sections 27-104-7, 29-5-2 and 31-11-3.

(3)(a) **(Repealed effective July 1, 2013).** — The board or State Port Authority, in its discretion, may use the design-build method of contracting for the renovation, repair and/or making of other improvements to not more than one (1) freezer and related equipment and/or facilities at the State Port at Gulfport, Mississippi. For the purposes of this subsection (3), the term "design-build method of contracting" means a contract that combines the design and construction phases of a project into a single contract and the contractor is required to satisfactorily perform, at a minimum, both the design and construction of the project.

(b) This subsection (3) shall stand repealed from and after July 1, 2013.

**SOURCES: Codes, 1942, § 7564-13; Laws, 1958, ch. 365, § 13; Laws, 1962, ch. 389; Laws, 1976, ch. 400, § 2; Laws, 1984; reenacted and amended, 1985, ch. 474, § 17; Laws, 1986, ch. 438, § 39; Laws, 1987, ch. 483, § 40; Laws, 1988, ch. 442, § 37; Laws, 1989, ch. 537, § 35; Laws, 1990, ch. 518, § 36; Laws, 1991, ch. 618, § 36; Laws, 1992, ch. 491, § 38; Laws, 1997, ch. 401, § 1; Laws, 2001, ch. 321, § 1; Laws, 2008, ch. 544, § 1; Laws, 2010, ch. 535, § 1; Laws, 2012, ch. 485, § 5, eff from and after passage (approved Apr. 26, 2012.)**

**Amendment Notes —** The 2008 amendment added (3); and designated the previously undesignated first and second paragraphs as (1) and (2), respectively.

The 2010 amendment substituted "July 1, 2013" for "July 1, 2010" in (3)(b).

The 2012 amendment added (2)(b); and made minor stylistic changes.

**Cross References —** Exemption of state port authority from certain regulations governing construction by the public procurement review board, see § 27-104-1.

Exemption of state port authority from certain public purchasing requirements, see § 31-7-1.

Exemption of state port authority from certain requirements of the department of finance and administration, see § 31-11-3.

## § 59-5-65. Representation of Sate Bond Commission by Attorney General; payment of costs of sale, issuance and delivery of bonds.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for. The State Bond Commission is hereby authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds herein provided for, and such costs may be paid for out of the proceeds derived from the sale of such bonds.

**SOURCES: Codes, 1942, § 7564-27; Laws, 1958, ch. 365, § 27; Laws, 1991, ch. 397 § 3; Laws, 2012, ch. 546, § 27, eff from and after July 1, 2012.**

**Amendment Notes —** The 2012 amendment added the exception at the beginning.

# CHAPTER 7

# County and Municipal Harbors

## Article 1.

## General Provisions.

## § 59-7-3. Port fund.

### ATTORNEY GENERAL OPINIONS

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

## § 59-7-5. Authorization of municipal harbor improvements.

### ATTORNEY GENERAL OPINIONS

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

ARTICLE 3.

SUPPLEMENTARY PROVISIONS.

## § 59-7-131. Recommendations by commission as to expenditure of funds.

### ATTORNEY GENERAL OPINIONS

A Port Commission possesses the power to employ or contract for personnel and consulting services to assist it in the performance of its responsibility. Moss, Feb. 27, 2004, A.G. Op. 04-0050.

ARTICLE 5.

SUPPLEMENTAL AND ADDITIONAL POWERS.

## § 59-7-205. General duties and powers of port commission.

### ATTORNEY GENERAL OPINIONS

County port commission has the authority to enter into a lease agreement with a private corporation for port operations in accordance with the requirements set forth in the applicable statutes. Smith, June 19, 2003, A.G. Op. 03-0236.

County port commission may enter into a lease agreement without going through a bidding process, as there is no statutory requirement for a bid process found in Section 59-7-205. Smith, June 19, 2003, A.G. Op. 03-0236.

Section 59-7-205 gives broad discretion as to the lease price; however, while this does not mean fair market value is required under this code section, the sale must still be made for good and valuable consideration and not be such as would constitute donation or gratuity. Smith, June 19, 2003, A.G. Op. 03-0236.

ARTICLE 9.

ADDITIONAL CUMULATIVE PROVISIONS.

## § 59-7-403. Levy of ad valorem tax in certain counties; disposition of proceeds of tax.

### ATTORNEY GENERAL OPINIONS

The legislature intended to provide a certain amount of revenue to a port and did not intend that revenue to increase without limitation; i.e., a port may receive the support of tax levies by the county to the extent provided by Section 59-7-403 by means of Section 27-39-329, subject to the ten percent cap on increase in receipts over the previous year. Meadows, Mar. 14, 2003, A.G. Op. #03-0048.

# CHAPTER 9

## County Port Authority or Development Commission

### § 59-9-1. Declaration of public policy.

#### ATTORNEY GENERAL OPINIONS

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

### § 59-9-3. Construction of chapter.

#### ATTORNEY GENERAL OPINIONS

A county development commission has the authority to budget for travel, lodging, meals and other marketing expenses directly related to recruiting industrial and business prospects to the county. Allen, Oct. 15, 2004, A.G. Op. 04-0450.

### § 59-9-5. Definitions.

#### ATTORNEY GENERAL OPINIONS

Even though a county development commission would not be authorized to donate funds directly to a particular group for tourism purposes, expending funds in developing land for a tourism is allowable if a factual determination is made that the endeavor constitutes a tourism enterprise. Crane, Apr. 18, 2003, A.G. Op. #03-0144.

### § 59-9-9. Appointment, oath, bond, and terms of office of members.

#### ATTORNEY GENERAL OPINIONS

It would violate the nepotism statute for an individual to be appointed to a county development commission by a county board of supervisors whose membership includes the individual's step-uncle. Allen, July 18, 2003, A.G. Op. 03-0340.

### § 59-9-13. Compensation of members.

#### ATTORNEY GENERAL OPINIONS

Since the compensation of port authority commissioners is limited by this section, any participation in the county group health insurance program by the commissioners would have to be funded solely by the individual commissioners. Hunter, Aug. 13, 2004, A.G. Op. 04-0364.

A member of the Harrison County Development Commission may decline to claim per diem compensation and reimbursement of expenses or any other type of compensation, and, if he does so, will

avoid a violation of the nepotism statute by the appointing authority. Bennett, Aug. 22, 2003, A.G. Op. 03-0418.

## § 59-9-15. General powers and duties of authority or commission; director; additional clerical assistance; commission may enter into joint venture for construction and operation of facilities under jurisdiction of commission.

### ATTORNEY GENERAL OPINIONS

A county board of supervisors has the discretionary authority, on recommendation of the county development commission, to appoint an executive director of the commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

The salary or a subsequent change in the salary of the executive director of a county development commission is subject to approval by a board of supervisors. If the appointment was for a term extending beyond the term of the appointing board, the successor board may, at its option, renounce the appointment as well as the salary for the position. Meadows, May 6, 2004, A.G. Op. 04-0051.

Section 59-9-27, which requires the board of supervisors to approve the employment of professional or technical assistance that exceeds $ 25,000, does not apply to the employment of the executive director of the county development commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

## § 59-9-17. General powers and authority of county; validation of prior acts.

### ATTORNEY GENERAL OPINIONS

Even though a county development commission would not be authorized to donate funds directly to a particular group for tourism purposes, expending funds in developing land for a tourism is allowable if a factual determination is made that the endeavor constitutes a tourism enterprise. Crane, Apr. 18, 2003, A.G. Op. 03-0144.

## § 59-9-27. Jurisdiction and duty of port authority over improvements; powers and duties of development commission.

### ATTORNEY GENERAL OPINIONS

The requirement of this section that employment by a county development commission of professional and technical assistance for sums in excess of $ 25,000 must be approved by the board of supervisors does not apply to the salary/compensation paid to the executive director, but would deal with such issues as in the employment of outside engineering firms, etc. Meadows, May 6, 2004, A.G. Op. 04-0051.

The requirement of this section that the board of supervisors approve the employment of professional or technical assistance that exceeds $ 25,000, does not apply to the employment of the executive director of the county development commission. Meadows, May 6, 2004, A.G. Op. 04-0051.

A county board of supervisors may contract with a private CPA firm to conduct a performance and compliance audit of the county development commission, but only in so far as such audit does not duplicate

the audits performed by the chancery clerk. Meadows, Aug. 23, 2004, A.G. Op. 04-0408.

## CHAPTER 11

## County Port and Harbor Commission



## § 59-11-1. Creation of commission.

### ATTORNEY GENERAL OPINIONS

Where an airport is owned by a county port commission created pursuant to this section, § 61-5-11, applying to municipal airport authorities could not be used to exempt from taxes leased property at the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

## § 59-11-3. Appointment of members; terms of office; per diem.

(1) Any county port and harbor commission created pursuant to Section 59-11-1 shall be appointed as follows: two (2) members shall be appointed by the Governor, one (1) from each of the two (2) municipalities of the county, which appointments shall be made from those persons recommended and nominated by the governing authorities of the municipalities, and shall be qualified electors of the county; and five (5) members shall be appointed by the board of supervisors of such county, each supervisor to recommend the appointment of one (1) member thereof. The members of the county port and harbor commission shall serve for terms concurrent with that of the Governor and the board of supervisors making such appointment.

(2) Each member of the county port and harbor commission shall receive per diem compensation in an amount up to Eighty-four Dollars ($84.00) for each day engaged in attendance of meetings of the county port and harbor commission or when engaged in other duties of the county port and harbor commission, and shall be reimbursed for mileage and actual travel expenses at the rate authorized for county employees under Section 25-3-41.

**SOURCES: Codes, 1942, § 7605-42; Laws, 1962, ch. 393, § 2; Laws, 2004, ch. 433, § 1; Laws, 2005, ch. 340, § 1; Laws, 2008, ch. 454, § 1; Laws, 2009, ch. 453, § 2, eff from and after July 1, 2009.**

**Amendment Notes —** The 2005 amendment inserted "or when engaged in other duties of the county port and harbor commission" following "county port and harbor commission" in (2).

The 2008 amendment, in (2), substituted "in an amount set by the board of supervisors in such county but not to exceed the federal per diem compensation" for "in the amount of Fifty-five Dollars ($55.00)," and made a minor stylistic change.

The 2009 amendment substituted "up to Eighty-four Dollars ($84.00)" for "to be fixed by the board of supervisors, but not to exceed the federal per diem compensation" in (2).

### ATTORNEY GENERAL OPINIONS

A county port and harbor commission may pay its commissioners the $ 55.00 per diem rate only at official meetings at which official action of the commission takes place, and not at committee meetings or while engaged in other duties. Genin, July 30, 2004, A.G. Op. 04-0335.

## CHAPTER 17

## State Inland Ports



## § 59-17-57. Representation of state bond commission by attorney general.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the board is hereby authorized and empowered to expend any sum not exceeding Fifteen Thousand Dollars ($15,000.00) from the proceeds derived from the sale of any one (1) series of bonds authorized hereunder to pay for the cost of the approving attorney's fees, validating, printing and cost of delivery of bonds authorized under this chapter.

**SOURCES: Codes, 1942, § 7623-27; Laws, 1968, ch. 430, § 27; Laws, 2012, ch. 546, § 28, eff from and after July 1, 2012.**

**Amendment Notes —** The 2012 amendment added the exception at the beginning.

## CHAPTER 21

## Boats and Other Vessels



### IN GENERAL

## § 59-21-3. Definitions.

### RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R.5th 347.

NUMBERING OF UNDOCUMENTED VESSELS

Sec.



## § 59-21-19. Size of certificate of number; temporary certificates; expiration dates; livery boat certificates; manufacturers' and dealers' certificates and numbers.

(1) The certificate of number shall be pocket-size, approximately two and one-half inches (2-½") by three and one-half inches (3-½"), and water resistant.

(2) Pending the issuance of the original certificate of number, the owner of the vessel may be furnished a temporary certificate of number valid for sixty (60) days from the date of issue. This temporary certificate shall be carried on board when the vessel is being operated.

(3) Each applicant for an original or transfer certificate of number, who is entitled to issuance thereof, shall be issued a certificate for a period of three (3) years from the last day of the month of receipt of the original or transfer certificate. This subsection shall not apply to the certificate of number of a livery boat.

(4) The certificate of number of a livery boat shall be plainly marked "livery boat." The description of the motor and type of fuel will be omitted from the certificate of number in any case where the motor is not rented with the boat. Original and renewal certificates of number of a livery boat shall be valid for a period of three (3) years and shall expire at midnight on June 30.

(5) Numbers and certificates of number awarded boats operated by manufacturers and dealers may be transferred from one (1) boat to another. In lieu of the description, the word "manufacturer" or "dealer", as appropriate, will be plainly marked on each certificate. The manufacturer or dealer may have the number awarded printed upon or attached to a removable sign or signs to be temporarily mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of Section 59-21-9.

**SOURCES: Codes, 1942, § 8496-11; Laws, 1960, ch. 165, § 11; Laws, 1962, ch. 220, § 5; Laws, 1964, ch. 468, § 4; Laws, 1979, ch. 383; Laws, 2006, ch. 521, § 2, eff from and after July 1, 2006.**

**Amendment Notes —** The 2006 amendment substituted "period of three (3) years" for "period of two (2) years" in (3) and (4); and deleted "of each biennium beginning June 30, 1971" from the end of (4).

## § 59-21-25. Fees for certificates of number; disposition of proceeds.

(1) Fees for the award of certificates of number for original, transfer, renewal, livery, dealer and duplicate shall be as follows:

(a) Less than 16 feet ..... $ 7.50
(b) 16 feet but less than 26 feet ..... $22.50
(c) 26 feet but less than 40 feet ..... $45.00
(d) 40 feet and over ..... $45.00
(e) Dealer number ..... $37.50
(f) Duplicate ..... $ 5.00
(g) Boat inspection fee ..... $10.00

(2) The fee provided for under subsection (1)(g) of this section shall only be charged when the owner of a boat requests the Department of Wildlife, Fisheries and Parks to perform an inspection of a boat serial number for the purpose of replacing or awarding a damaged or removed serial number.

(3) All fees for numbers and renewal of number shall be payable to the Mississippi Department of Wildlife, Fisheries and Parks to be deposited by the department in the State Treasury in a special fund to be designated as the Fisheries and Wildlife Fund, which shall be disbursed upon the recommendation of the department as may be appropriated by the Legislature. The State Treasurer shall release to the department such sums as are required to defray all administrative costs of the boat registration fee division of the department and to improve the law enforcement capability of the department on the inland and marine waters of the State of Mississippi and as may be budgeted by the department for the purpose of paying the cost of the administration of this chapter for education on water safety, improvement of water safety and motorboating facilities in the state, and advertising and promoting the waterways of the state. Any and all revenue over and above the actual administrative cost of implementing this chapter shall be used to fund salaries of additional conservation officers in all eighty-two (82) counties.

**SOURCES: Codes, 1942, § 8496-14; Laws, 1960, ch. 165, § 14; Laws, 1964, ch. 468, § 5; Laws, 1968, ch. 361, § 60; Laws, 1975, ch. 468, § 5; Laws, 1982, ch 365, § 13; Laws, 1988, ch. 599, § 2; Laws, 2000, ch. 516, § 128; Laws, 2006, ch. 521, § 1, eff from and after July 1, 2006.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of paragraph (3). The word "act" was changed to "chapter." The Joint Committee ratified the correction at its June 26, 2007, meeting.

**Amendment Notes —** The 2006 amendment revised the fees for certificate of number of vessels and revised the length of boat categories for the fees; added present (2); and redesignated former (2) as present (3).

SAFETY EQUIPMENT; OPERATION OF VESSELS

## § 59-21-81. Requirements as to lights, personal flotation devices and other safety equipment; children required to wear personal flotation devices; vessels to be seaworthy; safety requirements for operation of personal watercraft.

### RESEARCH REFERENCES

**ALR.** Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. 118 A.L.R.5th 347.

BOAT AND WATER SAFETY COMMISSION

Sec.
59-21-119. Purchase, operation and maintenance of equipment; purchase of property damage insurance.

## § 59-21-119. Purchase, operation and maintenance of equipment; purchase of property damage insurance.

The commission is hereby authorized to purchase, operate and maintain such motor vehicles, boats, trailers, motors and other equipment as may be deemed necessary and proper for the administration of this chapter. The commission may purchase property damage insurance on its motor vehicles, boats, trailers, motors and other equipment, and may expend funds from any available source for the purpose of obtaining such insurance.

**SOURCES: Codes, 1942, § 8496-23; Laws, 1960, ch. 165, § 23; Laws, 1964, ch. 468, § 9; Laws, 1968, ch. 265, § 4; Laws, 2007, ch. 394, § 1, eff from and after passage (approved Mar. 15, 2007.)**

**Amendment Notes —** The 2007 amendment added the last sentence.

# CHAPTER 23

## Alcohol Boating Safety Act

Sec.
59-23-3. Definitions.
59-23-5. Consent to chemical or breath tests by persons operating watercraft; offer and administration of tests; advisement of effect of refusal to submit to test; advisement of persons arrested of rights; uniform citation form.
59-23-7. Offenses and penalties.

## § 59-23-3. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings unless the context shall prescribe otherwise:

(a) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.

(b) "Intoxicated" means under the influence of alcohol or any combination of alcohol, controlled substance or drugs, so that there is impaired thought and action and loss of normal control of a person's faculties to such an extent as to endanger any person.

(c) "Law enforcement officer" means any officer described in Section 63-11-19 and includes a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks and a marine law enforcement officer employed by the Department of Marine Resources.

(d) "Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was eight one-hundredths percent (.08%) or more by weight of alcohol in the person's blood.

(e) "Public waters" means all public waters over which the state has jurisdiction.

(f) "Watercraft" means a motorized vessel with a motor of twenty-five (25) horsepower or greater used for transportation on public waters and personal watercraft (jet skis).

(g) "Operates a watercraft" or "operation of a watercraft" shall mean a watercraft that is underway in the water.

**SOURCES: Laws, 1995, ch. 620, § 2; Laws, 1996, ch. 406, § 1; Laws, 2010, ch. 370, § 1, eff from and after July 1, 2010.**

**Amendment Notes** — The 2010 amendment deleted (b) and (c), which were the definitions for "department" and "executive director" respectively, and redesignated the remaining subsections accordingly; in (c), substituted "any officer" for "an officer" and added "and a marine law enforcement officer employed by the Department of Marine Resources"; and in (d), substituted "eight one-hundreths percent (.08%)" for "ten one-hundreths percent (.10%)."

## § 59-23-5. Consent to chemical or breath tests by persons operating watercraft; offer and administration of tests; advisement of effect of refusal to submit to test; advisement of persons arrested of rights; uniform citation form.

(1) A person who operates a watercraft in waters over which this state has jurisdiction shall be deemed to have given consent to submit to a chemical test or test of his breath for the purpose of determining the alcohol content of his blood, as a condition of operating the watercraft in this state.

(2) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person. A law enforcement officer may offer a person more than one (1) chemical test under this section. However, all tests must be administered within three (3) hours after the officer has probable cause to believe the person violated this chapter.

If a person refuses to submit to a chemical test under this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to arrest and punishment consistent with the penalties prescribed in Section 59-23-7 for persons submitting to the test, and that the court shall order the person not to operate a watercraft for at least one (1) year.

(3) If the chemical test results in prima facie evidence that the person is intoxicated, he shall immediately be arrested.

(4)(a) The law enforcement officer arresting a person pursuant to the provisions of this chapter shall inform the person arrested that:

(i) The person arrested has the right to be represented by legal counsel;

(ii) The person arrested may waive the right to be represented by legal counsel; and

(iii) The charge for which the person is being arrested may be used against him, upon conviction, for purposes of receiving an enhanced penalty as provided in Section 59-23-7.

(b) The citation or affidavit which is issued to the person arrested shall be uniform throughout all jurisdictions in the State of Mississippi and shall contain a place for the arresting official to sign, stating that he has advised the person arrested of the information contained in paragraph (a) of this subsection. The judge hearing the case or accepting the guilty plea, as the case may be, shall sign in a place provided on the citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been advised pursuant to paragraph (a) of this subsection. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the citation or affidavit.

(c) The Mississippi Department of Wildlife, Fisheries and Parks shall prepare and furnish, no later than July 1, 1995, to all jurisdictions in the State of Mississippi a uniform citation form consistent with this chapter, which shall be used in all jurisdictions in the State of Mississippi.

(d) The Mississippi Department of Wildlife, Fisheries and Parks shall notify, by whatever means it deems appropriate, all law enforcement officers who are authorized to enforce the provisions of this chapter of their obligation to provide the information and execute the citation or affidavit, as described in paragraphs (a) and (b) of this subsection.

**SOURCES: Laws, 1995, ch. 620, § 3; Laws, 2010, ch. 370, § 2, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment substituted "alcohol content of his blood" for "alcoholic content of his blood" in (1).

RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While under the Influence, or the Like. 47 A.L.R.6th 107.

## § 59-23-7. Offenses and penalties.

(1) It is unlawful for any person to operate a watercraft on the public waters of this state who:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance which has impaired such person's ability to operate a watercraft; or

(c) Has eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter.

(2)(a) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 59-23-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than twenty-four (24) hours in jail, or both; and the court shall order such person to attend and complete a boating safety education course developed by the Department of Wildlife, Fisheries and Parks.

(b) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than forty-eight (48) consecutive hours nor more than one (1) year or sentenced to community service work for not less than ten (10) days nor more than one (1) year. The court shall order the person not to operate a watercraft for one (1) year.

(c) For any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Eight Hundred Dollars ($800.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than thirty (30) days nor more than one (1) year. The court shall order the person not to operate a watercraft for two (2) years.

(d) Any fourth or subsequent violation of subsection (1) of this section shall be a felony offense and, upon conviction, the offenses being committed within a period of five (5) years, the person shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and shall be imprisoned not less than ninety (90) days nor more than five (5) years in the custody of the Department of Corrections. The court shall order the person not to operate a watercraft for three (3) years.

(3) Any person convicted of operating any watercraft in violation of subsection (1) of this section where the person (a) refused a law enforcement officer's request to submit to a chemical test, or (b) was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall be punished consistent with the penalties prescribed herein for persons submitting to the test and the court shall order the person not to operate a watercraft for the time periods specified in subsection (2) of this section.

(4) Any person who operates any watercraft in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other member or limb of another shall, upon conviction, be guilty of a felony and shall be committed to the custody of the Department of Corrections for a period of time not to exceed ten (10) years.

(5) Upon conviction of any violation of subsection (1) of this section, the judge shall cause a copy of the citation and any other pertinent documents concerning the conviction to be sent immediately to the Mississippi Department of Wildlife, Fisheries and Parks and the Department of Marine Resources. A copy of the citation or other pertinent documents, having been attested as true and correct by the Director of the Mississippi Department of Wildlife, Fisheries and Parks, or his designee, or the Director of the Department of Marine Resources, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

**SOURCES: Laws, 1995, ch. 620, § 4; Laws, 2010, ch. 370, § 3, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment, in (1)(c), substituted "eight one-hundreths percent (.08%)" for "ten one-hundreths percent (.10%)"; in (1)(d), substituted "in the custody of the Department of Corrections" for "in the state penitentiary"; in (4), deleted "State" preceding "Department of Corrections"; and in (5), added "and the Department of Marine Resources" in the first sentence, and inserted "or the Director of the Department of Marine Resources, or his designee" in the last sentence; and made minor stylistic changes.

## RESEARCH REFERENCES

**ALR.** Validity, Construction, and Application of Statutes Prohibiting Boating While Intoxicated, Boating While under the Influence, or the Like. 47 A.L.R.6th 107.

# TITLE 61

# AVIATION



## CHAPTER 1

## Transportation Commission

### §§ 61-1-7 through 61-1-11. Repealed.

#### ATTORNEY GENERAL OPINIONS

Transportation Commissioners' requests for reimbursement of expenses should be placed on the Commission's agenda, setting forth the itemized amount to reimburse to each Commissioner, as an agenda item to be voted on by the Commission. The results of said vote should be reflected in the minutes for each meeting. Brown, Mar. 19, 2004, A.G. Op. 04-0073.

## CHAPTER 3

## Airport Authorities

SEC.



### § 61-3-3. Definitions.

#### ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

## § 61-3-7. Creation of regional airport authority; sharing a commissioner on the authority.

(1) Two (2) or more municipalities or two (2) or more municipalities and any state-supported institution of higher learning or a public community or junior college, by resolution of each, may create a public body, corporate and politic, to be known as a regional airport authority which shall be authorized to exercise its functions upon the issuance by the Secretary of State of a certificate of incorporation. The governing body of each municipality, the institution of higher learning or the public community or junior college, pursuant to its resolution, shall appoint one (1) person as a commissioner of the authority. However, if the regional airport authority consists of an even number of participants, which include two (2) or more municipalities or two (2) or more municipalities and a state institution of higher learning or a public community or junior college, an additional commissioner shall be appointed by the Governor. Such additional commissioner shall be a resident of a county other than the counties of the participating municipalities but contiguous to at least one (1) of such counties.

(2) A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities and the institution of higher learning or the public community or junior college then included in the regional authority and the commissioners of the regional authority, respectively, adopt a resolution consenting thereto. If a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority shall consent to the inclusion of the municipality, institution of higher learning or the public community or junior college in the regional authority, and if the municipal authority has any bonds outstanding, unless the holders of fifty-one percent (51%) or more in amount of the bonds consent, in writing, to the inclusion of the municipality in the regional authority, no such inclusion shall be effected. Upon the inclusion of any municipality, institution of higher learning or the public community or junior college in the regional authority, all rights, contracts, obligations and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities and the institution of higher learning or the public community or junior college then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provision for the retention or disposition of its assets and liabilities. However, if the regional authority has any bonds outstanding, no decrease shall be effected unless seventy-five percent (75%) or more of the holders of the bonds consent thereto in writing.

(4) If a municipality so elects, it may share its commissioner position with another municipality that is not then a participant in the regional authority. In order to do so, the initiating and participating municipalities, and the joining

municipality, all other municipalities participating at that time, and the commissioners of the regional authority, must adopt resolutions consenting to the sharing of the position. The initiating municipality and the joining municipality must reach an agreement to jointly determine the method for the appointment of their joint commissioner. Upon the adoption of the resolutions of authorization and the execution of the agreement between the participating and joining municipalities, the joint commissioner shall have the same powers, authority, duties and obligations otherwise vested in commissioners of the regional authority.

(5) A municipality, institution of higher learning or public community or junior college shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days before the hearing in a newspaper published in the municipality, in the institution of higher learning or in the public community or junior college, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality, in the institution of higher learning or in the public community or junior college.

(6) At the expiration of the term of all commissioners serving as of January 1, 1978, the airport authority shall effect staggered terms by the drawing of lots and reporting thereon to appointing authorities. The commissioners shall be designated to serve for terms of one (1) year, two (2) years, three (3) years, four (4) years and so forth depending upon the number of participating appointing authorities. Thereafter, each commissioner shall be appointed for a term of five (5) years except that vacancies occurring otherwise than by expiration of terms shall be filled for the unexpired term in the same manner as the original appointment.

**SOURCES: Codes, 1942, § 7545-33; Laws, 1958, ch. 230, § 3; Laws, 1978, ch. 396, § 1; Laws, 1999, ch. 309, § 3; Laws, 2011, ch. 448, § 1, eff from and after passage (approved Mar. 23, 2011.)**

**Amendment Notes —** The 2011 amendment added (4); redesignated former (4) and (5) as (5) and (6); and made a minor stylistic change.

## § 61-3-13. Compensation of commissioners; meetings of authority; voting; officers.

(1) Each commissioner of a regional or municipal airport authority may receive from that airport authority per diem compensation in the amount provided by Section 25-3-69 for each day or fraction of a day engaged in attendance of meetings of the authority or engaged in other official duties of the authority, not to exceed one hundred twenty (120) days in any one (1) year, and may receive from the airport authority actual traveling expenses incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

(2) The powers of each authority shall be vested in the commissioners of that authority. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present. There shall be elected a chairman and vice chairman from among the commissioners.

(3) The commissioners of an authority shall designate an executive director, who shall be the chief executive officer of the authority and shall perform those duties as are required by law and any other duties as may be assigned by the commissioners. The commissioners may designate the executive director as the purchasing agent of the authority. If so designated, the executive director shall have the authority of the purchasing agent of a state agency under Section 31-7-13.

**SOURCES: Codes, 1942, § 7545-36; Laws, 1958, ch. 230, § 6; Laws, 1978, ch. 396, § 2; Laws, 1994, ch. 384, § 1; Laws, 2004, ch. 433, § 2; Laws, 2012, ch. 450, § 1, eff from and after passage (approved Apr. 19, 2012.)**

**Amendment Notes —** The 2012 amendment added (3).

## § 61-3-15. General powers of authority.

An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power:

(a) To sue and be sued, to have a seal and to have perpetual succession.

(b) To purchase general liability insurance coverage, including errors and omissions insurance, for its officials and employees.

(c) To employ an executive director, secretary, technical experts, and such other officers, agents and employees, permanent and temporary, as it may require, and to determine their qualifications and duties, and to establish compensation and other employment benefits as may be advisable to attract and retain proficient personnel.

(d) To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

(e) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate and protect airports and air navigation facilities within this state and within any adjoining state, including the acquisition, lease, lease-purchase, construction, installation, equipment, maintenance and operation of such airports or buildings, equipment and other facilities or other property for the servicing of aircraft or for the comfort and accommodation of air travelers or for any other purpose deemed by the authority to be necessary to carry out its duties; to develop, operate, manage or own and maintain intermodal facilities to serve air and surface cargo and multimodal facilities to serve highway and rail passenger transportation needs to ensure

interface and interaction between modes for cargo and passengers; to construct, improve, and maintain means of ingress and egress to airport properties from and over off-airport sites with approval of the city or county in which the off-airport site is located; to market, promote and advertise airport properties, goods and services; and to directly purchase and sell supplies, goods and commodities incident to the operation of its airport properties without having to make purchases thereof through the municipal governing authorities, and with the authority to utilize dual-phase design-build and construction manager at-risk methods of construction in accordance with Sections 31-7-13.1 and 31-7-13.2. For all the previously stated purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, to prevent the establishment of airport hazards or to carry out its duties.

(f) To acquire, by purchase, gift, devise, lease, lease-purchase, eminent domain proceedings or otherwise, existing airports and air navigation facilities. However, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality or public agency of this or any other state without the consent of such authority, municipality or public agency.

(g) To establish or acquire and maintain airports in, over and upon any public waters of this state, and any submerged lands under such public waters, and to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(h) To establish, enact and enforce ordinances, rules, regulations and standards for public safety, aviation safety, airport operations and the preservation of good order and peace of the authority; to prevent injury to, destruction of or interference with public or private property; to protect property, health and lives and to enhance the general welfare of the authority by restricting the movements of citizens or any group thereof on the property of the authority when there is imminent danger to the public safety because of freedom of movement thereof; to regulate the entrances to property and buildings of the authority and the way of ingress and egress to and from the same; to establish fire limits and to hire firemen, including aircraft fire and rescue and similar personnel, and to establish and equip a fire department to provide fire and other emergency services on any property of the authority; to regulate, restrain or prohibit construction failing to meet standards established by the authority; to appoint and discharge police officers with jurisdiction limited to property of the airport authority and authorization to enforce the ordinances, rules and regulations of the authority, as well as the laws of the State of Mississippi, and to issue citations for infractions of all of such ordinances, rules, regulations, standards and laws of the State of Mississippi returnable to the court of appropriate jurisdiction.

(i) To develop and operate an industrial park or parks and exercise all authority provided for under Chapter 7, Title 57, Mississippi Code of 1972.

(j) To attach, pursuant to the power and procedure set forth in Chapter 33, Title 11, Mississippi Code of 1972, the equipment of debtors of the authority.

(k) To enter into agreements with local governments pursuant to Section 17-13-1 et seq.

(*l*) To render emergency assistance to other airports within the United States at an aggregate cost of less than Twenty Thousand Dollars ($20,000.00) per emergency. The assistance authorized in this paragraph must be rendered within ninety (90) days after a state of emergency has been declared by the federal government, or by the local or state government that has jurisdiction over the area where the airport needing assistance is located.

(m ) To enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services provided at, any airport or other property of the authority on the terms and conditions as the authority may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi for loss or damage to the authority if the authority determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

(n) To enter into mutual aid agreements with counties and municipalities for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted; to participate in the Statewide Mutual Aid Compact (SMAC) in accordance with Section 33-15-19.

**SOURCES: Codes, 1942, § 7545-37; Laws, 1958, ch. 230, § 7; Laws, 1978, ch. 396, § 3; Laws, 1979, ch. 441; Laws, 1980, ch. 410, § 1; Laws, 1984, ch. 495, § 30; Laws, 1985, ch. 447, § 1; reenacted and amended, Laws, 1985, ch. 474, § 29; Laws, 1986, ch. 438, § 42; Laws, 1987, ch. 483, § 43; Laws, 1988, ch. 442, § 40; Laws, 1989, ch. 537, § 38; Laws, 1990, ch. 518, § 39; Laws, 1991, ch. 618, § 39; Laws, 1992, ch. 379, § 3; Laws, 1992, ch. 491 § 41; Laws, 1994, ch. 394, § 1; Laws, 1994, ch. 580, § 1; Laws, 1997, ch. 422, § 1; Laws, 2008, ch. 419, § 1; Laws, 2009, ch. 371, § 1; Laws, 2012, ch. 450, § 2, eff from and after passage (approved Apr. 19, 2012.)**

**Amendment Notes —** The 2008 amendment, in (e), in the first sentence, inserted "to construct, improve, and maintain ... the off-airport site is located," and added "and with the authority to utilize ... Sections 31-7-13.1 and 31-7-13.2" at the end, and in the last sentence, substituted "For all the previously stated purposes" for "For such purposes."

The 2009 amendment added (*l*).

The 2012 amendment added language beginning "to hire firemen, including aircraft fire" and ending "on any property of the authority" preceding "to regulate, restrain or prohibit construction failing to meet standards" near the end of (h); and added (m) and (n).

ATTORNEY GENERAL OPINIONS

Since the Gulfport-Biloxi Regional Airport Authority does not have at least 50 employees, it may not create a self-insurance plan to reimburse employees for deductible payments they incur in excess of $ 500 up to $ 2,500.00 for health care costs per year. Faneca, July 16, 2003, A.G. Op. 03-0303.

The provisions of § 25-3-41 would not be applicable to expenses which are made under the authority of subsection (e) of this section for the purpose of marketing, promoting or advertising an airport. Faneca, Aug. 6, 2004, A.G. Op. 04-0391.

Municipal building code ordinances are effective and enforceable against private citizens constructing or erecting buildings or structures on property located within the municipal corporate limits but owned by a municipal airport authority. Kohnke, Aug. 11, 2005, A.G. Op. 05-0383.

## § 61-3-19. Disposal of airport property.

(1)(a) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, an authority may, by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, real or personal, or portion thereof or interest therein, acquired pursuant to this chapter. If Section 29-1-1 is applicable to a sale of real property, the sale shall comply with Section 29-1-1.

(b) If Section 29-1-1 is not applicable, the disposal by sale, lease or otherwise, shall be in accordance with the following procedure. The authority shall find and determine by resolution duly and lawfully adopted and spread upon its minutes that:

(i) The property is no longer needed for authority purposes and is not to be used in the authority's operation;

(ii) There is no state agency, board, commission or any governing authority within the state that has expressed a need or use for the property and the federal government has not expressed a need or use for the property; and

(iii) The use of the property for the purpose for which it is to be sold, leased or otherwise disposed of will promote and foster the development and improvement of the authority or of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof.

(2) After making the determinations, the authority may sell, lease or otherwise dispose of the property in accordance with applicable law and by any of the following methods:

(a) The authority may sell, lease or otherwise dispose of the property if the consideration is not less than the fair market price for the property as determined by averaging the appraisals of two (2) professional property appraisers selected by the authority and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the authority and the purchaser or lessee.

(b) The authority may sell, lease or otherwise dispose of the property to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which

the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to lease, sell or otherwise dispose of the property and to accept sealed competitive bids for the sale, lease or disposal of the property. The authority shall thereafter accept bids for the sale, lease or disposal of the property and shall award the sale, lease or disposal to the highest bidder.

(c) The authority may sell and dispose of personal property at public sale for cash to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to sell and dispose of the personal property at public sale for cash. Any public sale for cash may be conducted by or on behalf of the authority. At the public sale for cash, the personal property shall be sold and disposed of to the highest bidder.

(d) The authority may sell and dispose of personal property by use of an Internet web service available to the public, including, but not limited to, an Internet auction website, for cash or irrevocable electronic transfer of funds, to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the following information:

(i) The authority's intention to sell and dispose of the personal property through use of the Internet web service;

(ii) The listing location of the personal property on the Internet website; and

(iii) The closing date and time of the Internet sale.

At the Internet sale, the personal property shall be sold and disposed of to the highest bidder; provided, all Internet sales shall comply with federal law.

Notwithstanding anything herein to the contrary, in the case of a sale, lease or disposal of property to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease or other disposal thereof may be effected in such manner and upon such terms as the commissioners of the authority may deem to be in the best interest of civil aviation.

(3) The authority may lease lands owned by the authority for oil, gas and mineral exploration and development upon the terms and conditions and for consideration as the authority shall deem proper and advisable. However, no oil, gas or mineral lease shall be for a primary term of more than ten (10) years and the lease or leases shall provide for annual rentals of not less than One Dollar ($1.00) per acre and shall provide for royalties of not less than three-sixteenths (3/16) of all oil, gas and other minerals produced, including sulphur. All rentals, royalties or other revenue payable under any lease executed under this section shall be paid to and collected by the authority. The leases shall specifically provide that, in no event, shall any such lease or the exercise of any rights thereunder, interfere with the use of any airport or air navigational facilities for their intended purposes.

**SOURCES: Codes, 1942, § 7545-39; Laws, 1958, ch. 230, § 9; Laws, 1984, ch. 370; Laws, 1992, ch. 379, § 7; Laws, 1993, ch. 615, § 14; Laws, 1996, ch. 404, § 4; Laws, 2011, ch. 470, § 1; Laws, 2012, ch. 450, § 3, eff from and after passage (approved Apr. 19, 2012.)**

**Amendment Notes** — The 2011 amendment rewrote the section.
The 2012 amendment added (3).

**ATTORNEY GENERAL OPINIONS**

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

## § 61-3-21. Operation and use privileges; exemption from taxation.

(1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases and other arrangements for terms not to exceed fifty (50) years with any persons: (a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes; (b) conferring the privilege of supplying goods, commodities, things, services or facilities at the airport or air navigation facility; and (c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and which shall be established with due regard to the property and improvements used and the expenses of operation to the authority. In no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility or portion or facility thereof.

(2) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, Mississippi Code of 1972, an authority may, by contract, lease or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed fifty (50) years, the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority. However, no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection (1) of this section.

(3) All contracts, leases and other arrangements entered into pursuant to this section are deemed to serve a public and governmental purpose as a

matter of public necessity; therefore, all such contracts, leases, and other arrangements and all structures, improvements and other facilities erected, installed, constructed or located in connection therewith on an airport or air navigation facility owned or controlled by an authority, or any portion of facility thereof or space therein, shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property for so long as may otherwise be lawful, and the charges, rentals and fees received by an authority in connection with such contracts, leases and other arrangements shall be deemed to be in lieu of said taxes.

**SOURCES: Codes, 1942, § 7545-41; Laws, 1958, ch. 230, § 11; Laws, 1992, ch. 464, § 1; Laws, 2007, ch. 540, § 1; Laws, 2008, ch. 352, § 1, eff from and after passage (approved Mar. 26, 2008.)**

**Amendment Notes —** The 2007 amendment substituted "fifty (50) years" for "forty (40) years" in the first paragraph of (1) and in (2); and added (4).

The 2008 amendment deleted former (4), which provided for the repeal of the section from and after July 1, 2010.

### ATTORNEY GENERAL OPINIONS

A regional airport authority has authority to lease real property to its parking concessionaire, a private entity, and the entity leasing the property would not be subject to the public purchasing and contracting provisions of Section 31-7-1 et seq. or the bonding and related provisions of Section 31-5-1 et seq. Faneca, Apr. 1, 2005, A.G. Op. 05-0114.

Real estate owned by a regional airport authority and leased to a private company is exempt from taxation and is not taxable to the private company. Andrews, Sept. 23, 2005, A.G. Op. 05-0462.

## § 61-3-24. Lien on aircraft that land at airport for full amount of landing fees or other charges; enforcement of lien.

(1) An authority, at which a commercial airline lands an aircraft operating under its Federal Aviation Administration certificate, shall have a lien upon all aircraft that land at the authority's airport by the airline for the full amount of any landing fees, or other rates and charges previously promulgated by the authority in its rules and regulations, incurred by the airline at the airport by any aircraft operating under the airline's Federal Aviation Administration certificate.

(2) An authority may enforce any lien created herein against a nonresident debtor airline pursuant to the following procedure: a court of appropriate jurisdiction may issue a writ of sequestration, ex parte, against any aircraft operating under the Federal Aviation Administration certificate of the nonresident debtor airline and located at the airport operated by the authority. However, before issuing a writ of sequestration, the court shall find there is prima facie evidence that the nonresident debtor airline is past due on the landing fees or other rates and charges, that the authority has submitted prima facie evidence of exigent circumstances for the issuance of the writ, and that the authority has submitted a corporate surety bond in the amount of one

hundred twenty-five percent (125%) of the past-due amount claimed. Upon issuing the writ of sequestration, the court shall grant the nonresident debtor airline an opportunity for an immediate evidentiary hearing to rebut the authority's claim and revoke the writ. The court shall allow the nonresident debtor airline to substitute in place of the sequestered aircraft a corporate surety bond with the court in the amount of one hundred twenty-five percent (125%) of the past-due amount claimed by the authority for the purpose of securing payment.

**SOURCES: Laws, 2012, ch. 343, § 1, eff from and after passage (approved Apr. 16, 2012.)**

## § 61-3-79. Municipal cooperation with authority.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created or any municipality in which any of the property of the authority is located or which is contiguous to any property of the authority may, upon such terms, with or without consideration, as it may determine:

(a) Lend or donate money to the authority;

(b) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

(c) Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished onto or in connection with such airports or air navigation facilities;

(d) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

(e) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

(f) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(g) Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

**SOURCES: Codes, 1942, § 7545-47; Laws, 1958, ch. 230, § 17; Laws, 2012, ch. 450, § 4, eff from and after passage (approved Apr. 19, 2012.)**

**Amendment Notes —** The 2012 amendment inserted "or any municipality in which any of the property of the authority is located or which is contiguous to any property of the authority" near the end of the introductory paragraph; and deleted "adjacent" following "to be furnished" in (c); and made minor stylistic changes.

ATTORNEY GENERAL OPINIONS

The mere act of conveyance of a parcel of municipal property to an airport authority does not, without further action, operate to close public streets on the property streets, or to convey the municipality's interest in those streets. If the facts do not support the presumption of abandonment, the mayor and city council must, pursuant to Section 21-37-7, enter an order closing the streets, or the portions that run through the property in question. Kohnke, Aug. 11, 2005, A.G. Op. 05-0383.

## CHAPTER 5

## Acquisition, Disposition and Support of Airport Facilities



### MUNICIPAL AIRPORT LAW



### § 61-5-1. Short title.

ATTORNEY GENERAL OPINIONS

Development authorities or commissions created under §§ 59-9-1 et seq. and §§ 59-11-1 et seq. do not have the powers or authorities granted by the Municipal Airport Law, §§ 61-5-1 et seq. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

### § 61-5-5. General powers of municipalities as to establishment, acquisition, operation, etc., of airports and air navigation facilities.

ATTORNEY GENERAL OPINIONS

As a city is authorized under this section to continue operations of a municipal airport, it is also authorized, pursuant to § 61-5-15, to accept and receive federal and state monies for any proper airport purposes. Thomas, Mar. 11, 2004, A.G. Op. 04-0094.

### § 61-5-11. Operation and use privileges; exemption from taxation.

(1) In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan or agreement pursuant to Section 61-5-15, enter into contracts, leases and other arrangements for a term not exceeding fifty (50) years with any persons:

(a) Granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes; or

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or

(c) Making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

In each case the municipality may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(2) Except as may be limited by the terms and conditions of any grant, loan or agreement pursuant to Section 61-5-15, a municipality may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed fifty (50) years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality. However, no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsection (1) of this section.

(3) All contracts, leases and other arrangements entered into pursuant to this section are deemed to serve a public and governmental purpose as a matter of public necessity; therefore, all such contracts, leases and other arrangements, and all structures, improvements and other facilities erected, installed, constructed or located in connection therewith on an airport or air navigation facility owned or controlled by a municipality, or any portion or facility thereof or space therein, shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property for so long as may otherwise be lawful, and the charges, rentals and fees received by a municipality in connection with such contracts, leases and other arrangements shall be deemed to be in lieu of said taxes.

**SOURCES: Codes, 1942, § 7545-05; Laws, 1958, ch. 513, § 5; Laws, 1992, ch. 464, § 2; Laws, 2007, ch. 540, § 2; Laws, 2008, ch. 352, § 2, eff from and after passage (approved Mar. 26, 2008.)**

**Amendment Notes —** The 2007 amendment substituted "fifty (50) years" for "forty (40) years" in the introductory paragraph of (1) and in (2); and added (4).

The 2008 amendment deleted former (4), which provided for the repeal of the section from and after July 1, 2010.

## ATTORNEY GENERAL OPINIONS

Where an airport is owned by a county port commission created pursuant to § 59-11-1, this section, applying to municipal airport authorities, could not be used

to exempt from taxes leased property at the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0584.

## § 61-5-15. Acceptance, etc., of federal and state aid; designation of agent.

### ATTORNEY GENERAL OPINIONS

As a city is authorized under § 61-5-5 to continue operations of a municipal airport, it is also authorized, pursuant to this section, to accept and receive federal and state monies for any proper airport purposes. Thomas, Mar. 11, 2004, A.G. Op. 04-0094.

## § 61-5-19. Authority to contract or enter into joint use or similar agreements.

A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by the Municipal Airport Law.

Without limiting the foregoing, a municipality may enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services at, any airport or other property of the municipality used in connection with an airport on the terms and conditions as the municipality may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi to the municipality if the municipality determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

**SOURCES: Codes, 1942, § 7545-14; Laws, 1958, ch. 513, § 14; Laws, 2012, ch. 450, § 5, eff from and after passage (approved Apr. 19, 2012.)**

**Amendment Notes** — The 2012 amendment added the second paragraph.

## § 61-5-25. Delegation of municipal authority to airport board or other agency.

### ATTORNEY GENERAL OPINIONS

Pursuant to this section, a county board of supervisors may pass a resolution designating the county port and harbor commission as the airport board and prescribing its powers and duties with regard to the airport. Genin, Jan. 9, 2004, A.G. Op. 03-0494.

## § 61-5-35. Joint operations; agreement.

### ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

## § 61-5-37. Joint operations; joint board generally.

### ATTORNEY GENERAL OPINIONS

A joint airport board may enter into an incentive-based contract with a consultant as long as the contract provisions are consistent with the following requirements (1) incentive payments are authorized by the original contract and were contemplated when bids or proposals are submitted, (2) predetermined objective standards are specified so that a determination can be made that an incentive payment has been earned and the amount of the payment can be determined, and (3) the amount of the payments do not exceed a specified maximum amount contained in the contract. Bowman, Nov. 14, 2005, A.G. Op. 05-0531.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

## § 61-5-39. Joint operations; limitations of powers of joint board.

### ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

## CHAPTER 15

### Registration of Aircraft

### § 61-15-1. Duties of State Tax Commission generally.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

### § 61-15-7. Filing of application for registration; fees; form and contents of applications; exemptions from registration requirement; exemption license; penalties for failure to register.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

### § 61-15-9. Maintenance of records on registered aircraft; assignment of license number; registration stickers; replacement of certificate of registration; renewal of registration; sale of registration certificate; transfer of registration.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

### § 61-15-13. Promulgation of rules and regulations by State Tax Commission.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## CHAPTER 19

### Aviation Hazards

SEC.

61-19-1. Marking of certain anemometer towers required; violation [Repealed effective July 1, 2013].

## § 61-19-1. Marking of certain anemometer towers required; violation [Repealed effective July 1, 2013].

(1) For purposes of this section, the term, anemometer, means an instrument for measuring and recording the speed of the wind. For purposes of this section, the term, anemometer tower, means a structure, including all guy wires and accessory facilities, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of a wind turbine generator.

(2) Any anemometer tower that is fifty (50) feet in height above the ground or higher, that is located outside the exterior boundaries of any municipality, and whose appearance is not otherwise mandated by state or federal law shall be marked, painted, flagged, or otherwise constructed to be recognizable in clear air during daylight hours. Any anemometer tower that was erected before July 1, 2011, shall be marked as required in this section within one (1) year after July 1, 2011. Any anemometer tower that is erected on or after July 1, 2011, shall be marked as required in this section at the time it is erected. Marking required under this section includes marking the anemometer tower, guy wires, and accessory facilities as follows:

(a) The top one-third (⅓) of the anemometer tower shall be painted in equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and ending with orange at the bottom of the marked portion of the tower;

(b) Two (2) marker balls shall be attached to and evenly spaced on each of the outside guy wires;

(c) The area surrounding each point where a guy wire is anchored to the ground shall have a contrasting appearance with any surrounding vegetation. If the adjacent land is grazed, the area surrounding the anchor point shall be fenced. For purposes of this section, the term, area surrounding the anchor point, means an area not less than sixty-four (64) square feet whose outer boundary is at least four (4) feet from the anchor point; and

(d) One or more seven-foot safety sleeves shall be placed at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point.

A violation of this section is a misdemeanor.

(3) This section shall stand repealed on July 1, 2013.

**SOURCES: Laws, 2011, ch. 475, § 1, eff from and after July 1, 2011.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

# TITLE 63

# MOTOR VEHICLES AND TRAFFIC REGULATIONS



## CHAPTER 1

## Driver's License



### Article 1.

### Driver's License.

Sec.

## § 63-1-5. Requirement of motor vehicle operator's license; penalty for violation of section.

**[Effective until October 1, 2011, this section will read:]**

No person shall drive or operate a motor vehicle other than a motorcycle upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, except those persons especially exempted by Section 63-1-7.

**[Effective from and after October 1, 2011, this section will read:]**

(1) No person shall drive or operate a motor vehicle other than a motorcycle upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, except those persons especially exempted by Section 63-1-7.

(2) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or both.

**SOURCES: Codes, 1942, § 8091; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 5; Laws, 2011, ch. 468, § 3, eff from and after Oct. 1, 2011.**

**Amendment Notes** — The 2011 amendment, effective October 1, 2011, added (2).

**Cross References** — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

There is no statutory prohibition to a trusty (inmate) without a valid driver's license driving a county vehicle from a parking place to a wash rack, all on the same premises and without traveling on a public road. Kuykendall, Aug. 20, A.G. Op. 04-0397.

## § 63-1-6. Requirement of motorcycle operator's license.

JUDICIAL DECISIONS

**1. Vehicle purchase.**

Trial court erred by denying a seller's motion for summary judgment in the parents' wrongful death action, as Mississippi law did not impose a duty on the seller, sufficient to support a negligence claim, to restrict motor vehicle sales to licensed drivers or to determine the competence of drivers as part of the sale; the son was not required to have an "E" endorsement on his license to purchase the motorcycle, only to drive the motorcycle on a highway. Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897 (Miss. 2007).

## § 63-1-7. Exemption from license requirement.

No license issued pursuant to this article shall be required of:

(a) Any person while operating a motor vehicle for military purposes, if the person is a member of the United States Armed Forces or Reserves on active duty, a member of the National Guard on active duty or full-time National Guard duty, a National Guard military technician, or participating in part-time National Guard training.

(b) Any nonresident person who has in his immediate possession a valid license to drive a motor vehicle on the highways of his home state or country, issued to him by the proper authorities of his home state or country, or of any nonresident person whose home state or country does not require the licensing of a person to operate a motor vehicle on the highways but does require him to be duly registered. Such person being eighteen (18) years of age or older may operate a motor vehicle in the state for a period of sixty (60) days without securing a license. However, any nonresident person operating a motor vehicle in this state shall be subject to all the provisions of this article, except as specified above.

(c) Any person while operating a road roller, road machinery or any farm tractor or implement of husbandry temporarily drawn, moved or propelled on the highways.

(d) Any engineer or motorman using tracks for road or street, though used in the streets.

(e) Any person while operating an electric personal assistive mobility device as defined in Section 63-3-103.

**SOURCES: Codes, 1942, § 8092; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 6; Laws, 1994, ch. 588, § 3; Laws, 2003, ch. 485, § 7; Laws, 2005, ch. 541, § 1, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment rewrote (a).

## § 63-1-9. Persons prohibited from obtaining license; issuance of temporary driving permits intermediate licenses and driver's licenses.

(1) No driver's license, intermediate license or temporary learning permit shall be issued pursuant to this article:

(a) To any person under the age of eighteen (18) years except as provided in this article.

(b) To any person whose license to operate a motor vehicle on the highways of Mississippi has been previously revoked or suspended by this state or any other state or territory of the United States or the District of Columbia, if the revocation or suspension period has not expired.

(c) To any person who is an habitual drunkard or who is addicted to the use of other narcotic drugs.

(d) To any person who would not be able by reason of physical or mental disability, in the opinion of the commissioner or other person authorized to grant an operator's license, to operate a motor vehicle on the highways with safety. However, persons who have one (1) arm or leg, or have arms or legs deformed, and are driving a car provided with mechanical devices whereby the person is able to drive in a safe manner over the highways, if otherwise qualified, shall receive an operator's license the same as other persons. Moreover, deafness shall not be a bar to obtaining a license.

(e) To any person who is under the age of seventeen (17) years to drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, or to drive any motor vehicle while in use as a public or common carrier of persons or property.

(f) To any person as an operator who has previously been adjudged to be afflicted with and suffering from any mental disability and who has not at time of application been restored to mental competency.

(g) To any unmarried person under the age of eighteen (18) years who does not at the time of application present a diploma or other certificate of high school graduation or a general educational development certificate issued to the person in this state or any other state; or on whose behalf documentation has not been received by the Department of Public Safety from that person or a school official verifying that the person:

(i) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate;

(ii) Is enrolled in school in this state or any other state;

(iii) Is enrolled in a "nonpublic school," as such term is defined in Section 37-13-91(2)(i); or

(iv) Is unable to attend any school program due to circumstances deemed acceptable as set out in Section 63-1-10.

(h) To any person under the age of eighteen (18) years who has been convicted under Section 63-11-30.

(2) All permits and licenses issued on or before July 31, 2009, shall be valid according to the terms upon which issued. From and after August 1, 2009:

(a) A temporary driving permit may be issued to any person who is at least fifteen (15) years of age who otherwise meets the requirements of this article.

(b) An intermediate license may be issued to any person who is at least sixteen (16) years of age who otherwise meets the requirements of this article and who has held a temporary driving permit for at least one (1) year without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the one-year requirement for the holding of a temporary driving permit before an applicant can qualify for an intermediate license.

(c) A driver's license may be issued to any person who is at least sixteen and one-half (16-½) years of age who otherwise meets the requirements of this article and who has held an intermediate license for at least six (6) months without any conviction under Section 63-11-30 or of a moving violation. Any conviction under Section 63-11-30 or of a moving violation shall restart the six-month requirement for the holding of an intermediate license before an applicant can qualify for a driver's license. However, a person who is at least seventeen (17) years of age who has been issued a temporary driving permit and who has never been convicted under Section 63-11-30 or of a moving violation shall not be required to have held an intermediate license.

(d) An applicant for a Mississippi driver's license who, at the time of application, is at least sixteen and one-half (16-½) years of age and who has held a valid motor vehicle driver's license issued by another state for at least six (6) months shall not be required to hold a temporary driving permit or an intermediate license before being issued a driver's license.

(3) The commissioner shall ensure that the temporary driving permit, intermediate license and driver's license issued under this article are clear, distinct and easily distinguishable from one another.

**SOURCES: Codes, 1942, § 8093; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 7; Laws, 1994, ch. 588, § 1; Laws, 1995, ch. 540, § 2; Laws, 1996, ch. 527, § 1; Laws, 2000, ch. 624, § 2; Laws, 2009, ch. 488, § 1, eff from and after July 1, 2009.**

**Editor's Note —** The section heading is set out above to correct an error in the 2009 Cumulative Supplement.

**Amendment Notes —** The 2009 amendment in (1), substituted "other state or territory" for "other state and/or territory" and "if the revocation" for "and such revocation" in (b), substituted "and are driving a car" for "and have their car" in (d), and in (g), substituted "educational" for "education" everywhere it appears, inserted "on whose behalf" and "has not been received by the Department of Public Safety from that person or a school official verifying, and made minor stylistic changes; and in (2), substituted "July 31, 2009" for "June 30, 2000" and "August 1, 2009" for "July 1, 2000" in the introductory language, in (b), substituted "sixteen (16) years" for "fifteen (15) years," "one (1) year" for "six (6) months" and "one-year requirement" for "six-month requirement," and substituted "sixteen and one-half (16-) years" for "sixteen (16) years" each time it appears in (c) and (d).

## § 63-1-10. Educational requirements for issuance of license to person under eighteen years of age; documentation; appeal of denial of license.

(1) Upon the written request of a parent or guardian of any applicant for a license under eighteen (18) years of age, the school district in which the applicant is enrolled shall submit documentation to the Department of Public Safety verifying that the applicant is in compliance with Section 63-1-9(1)(g). The verification shall be signed by the school principal or his designee, or, in the case of a home study program, the parent, or the adult education supervisor of the General Educational Development Program or his designee. If the student is enrolled in a nonpublic school, the school principal or his designee is encouraged to submit the verification on behalf of the student. Documentation of the applicant's enrollment status shall be submitted on a form designed by the State Department of Education that includes the written signed and notarized parent or guardian's consent authorizing the release of the applicant's attendance records to the Department of Public Safety, as approved by the Department of Public Safety, in a manner that insures the authenticity of the form and the information or signature contained thereon, including via facsimile. The forms required under this section to provide documentation shall be made available to all public high schools, private schools accredited by the State Board of Education, adult education supervisors at school board offices and, upon request, to others through the Department of Public Safety.

(2) Whenever an applicant or licensee who is under eighteen (18) years of age is unable to attend any school program due to acceptable circumstances, the school where the student last attended shall transmit documentation to the department to excuse such student from the provisions of Section 63-1-9(1)(g). The school principal or his designee shall determine whether nonattendance or absences are excused pursuant to Section 37-13-91. For purposes of this section, suspension or expulsion from school or incarceration in a correctional institution is not an acceptable circumstance for a person being unable to attend school.

(3) Any person denied a license for failure to satisfy the education requirements of Section 63-1-9(1)(g) shall have the right to file a request within thirty (30) days thereafter for a hearing before the Department of Public Safety to determine whether the person is entitled to a license or is subject to the cancellation of his license under the provisions of this section. The hearing shall be held within ten (10) days of the receipt by the department of the request. Appeal from the decision of the department may be taken under Section 63-1-31.

**SOURCES: Laws, 1994, ch. 588, § 2; Laws, 2009, ch. 488, § 2, eff from and after July 1, 2009.**

**Amendment Notes —** The 2009 amendment rewrote the section to require public schools to submit documentation verifying applicant for driver's license, intermediate

license or temporary permit who is under the age of eighteen and has not yet graduated is enrolled in school or acceptably excused.

## § 63-1-10.1. Report when student under eighteen who has been issued license, intermediate license or temporary license is coded as drop out.

A school superintendent or designee shall report to the Department of Education on a schedule determined by the State Board of Education when a student under eighteen (18) years of age who has been issued a driver's license, intermediate license or temporary learning permit has been coded as a "drop out" as defined by the State Board of Education. The Department of Education will provide notification to the Department of Public Safety of those students under eighteen (18) years of age who have obtained a driver's license, intermediate license or temporary learning permit and have been coded by the local school district as a "drop out" upon verification that prior written parental consent for the release of educational records has been obtained in compliance with the Family Educational Rights and Privacy Act of 1972, as amended, 20 USC Section 1232.

**SOURCES: Laws, 2009, ch. 560, § 32, eff from and after July 1, 2009.**

## § 63-1-19. Application for license; registration with Selective Service for certain males.

(1)(a) Every applicant for a license or permit issued pursuant to this article, or for renewal of such license or permit, shall file an application for such license, permit or renewal, on a form provided by the Department of Public Safety, with the commissioner or an official license examiner of the department. All persons not holding valid, unexpired licenses issued in this state shall be required to secure an original license, except those specifically exempted from licensing under Section 63-1-7. The application shall state the name, date of birth, the social security number of the applicant unless the applicant is not a United States citizen and does not possess a social security number issued by the United States government, sex, race, color of eyes, color of hair, weight, height and residence address, and whether or not the applicant's privilege to drive has been suspended or revoked at any time, and, if so, when, by whom, and for what cause, and whether any previous application by him has been denied, and whether he has any physical defects which would interfere with his operating a motor vehicle safely upon the highways.

(b) Every applicant for an original license shall show proof of domicile in this state. The commissioner shall promulgate any rules and regulations necessary to enforce this requirement and shall prescribe the means by which an applicant for an original license may show domicile in this state. Proof of domicile shall not be required of applicants under eighteen (18) years of age.

(c) Unless the applicant is not a United States citizen and does not possess a social security number issued by the United States government, each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

(2) No person who is illegally in the United States or Mississippi shall be issued a license. The application of a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall state the name, date of birth, sex, race, color of eyes, color of hair, weight, height and residence address, and whether or not the applicant's privilege to drive has been suspended or revoked at any time, and, if so, when, by whom, and for what cause, and whether any previous application by him has been denied, and whether he has any physical defects which would interfere with his operating a motor vehicle safely upon the highways. The commissioner shall adopt and promulgate such rules and regulations as he deems appropriate requiring additional documents, materials, information or physical evidence to be provided by the applicant as may be necessary to establish the identity of the applicant and that the applicant is not present in the United States or the State of Mississippi illegally.

(3) Whenever a person who has applied for or who has been issued a license or permit under this article moves from the address listed in the application or on the permit or license, or whenever the name of a licensee changes by marriage or otherwise, such person, within thirty (30) days thereafter, shall notify, in writing, the Department of Public Safety, Driver Services Division, and inform the department of his or her previous address and new address and of his or her former name and new name. The department shall not change the name of a licensee or permittee on his or her license or permit unless the applicant appears in person at an office of the department and provides a certified copy of his or her marriage license, court order, birth certificate or divorce decree changing the licensee's or permittee's name.

(4)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for a permit or license or a renewal of a permit or license under this chapter shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

**SOURCES: Codes, 1942, § 8094; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1956, ch. 378, § 1; Laws, 1985, ch. 376, § 10; Laws, 1997, ch. 588, § 19; Laws, 1999, ch. 397, § 2; Laws, 2002, ch. 388, § 1; Laws, 2002, ch. 584, § 3; Laws, 2005, ch. 541, § 8, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment inserted (3); and renumbered former (3) as present (4).

**RESEARCH REFERENCES**

**ALR.** Validity of state statutes, regulations, or other identification requirements restricting or denying driver's licenses to illegal aliens. 16 A.L.R.6th 131.

## § 63-1-21. Temporary permits; intermediate licenses.

(1) To obtain a new or original driver's or operator's license, every applicant other than a person holding an out-of-state license shall first obtain a temporary driving permit by paying a fee of One Dollar ($1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee provided for in Section 63-1-43.

(2) A temporary driving permit entitles the holder, provided the permit is in his immediate possession, to drive a motor vehicle other than a motorcycle on the highways of the State of Mississippi only when accompanied by a licensed operator who is at least twenty-one (21) years of age and who is actually occupying the seat beside the driver. A temporary driving permit may be issued to any applicant who is at least fifteen (15) years of age. A temporary driving permit shall be valid for a period of two (2) years from the date of issue.

(3)(a) An intermediate license allows unsupervised driving from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:30 p.m. Friday and Saturday, and allows unsupervised driving any time for a person traveling directly to or from work. At all other times the intermediate licensee must be supervised by a parent, guardian or other person age twenty-one (21) years or older who holds a valid driver's license under this article and who is actually occupying the seat beside the driver.

(b) The fee for issuance of an intermediate license shall be Five Dollars ($5.00).

(4) Except as otherwise provided by Section 63-1-6, every applicant for a restricted motorcycle operator's license or a motorcycle endorsement shall first obtain a temporary motorcycle driving permit by paying a fee of One Dollar ($1.00) to the Department of Public Safety, successfully completing the examination provided for in Section 63-1-33, and paying the examination fee provided for in Section 63-1-43. All applicants for a temporary motorcycle permit shall:

(a) Be at least fifteen (15) years of age;

(b) Operate a motorcycle only under the direct supervision of a person at least twenty-one (21) years of age who possesses either a valid driver's or operator's license with a motorcycle endorsement or a valid restricted motorcycle operator's license;

(c) Be prohibited from transporting a passenger on a motorcycle;

(d) Be prohibited from operating a motorcycle upon any controlled access highway; and

(e) Be prohibited from operating a motorcycle during the hours of 6:00 p.m. through 6:00 a.m. Temporary motorcycle driving permits shall be valid for the same period of time and may be renewed upon the same conditions as temporary driving permits issued for vehicles other than motorcycles.

**SOURCES: Codes, 1942, § 8095; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 2; Laws, 1964, ch. 454; Laws, 1966, ch. 570, § 1; Laws, 1985, ch. 376, § 2; Laws, 1994, ch. 588, § 6; Laws, 2000, ch. 624, § 3; Laws, 2009, ch. 488, § 3; Laws, 2011, ch. 467, § 1, eff from and after July 1, 2011.**

**Amendment Notes** — The 2009 amendment added "Sunday through Thursday...directly to or from work" in (3); and added (5).

The 2011 amendment rewrote (1); substituted "two (2) years" for "one (1) year" at the end of (2); redesignated former (3) and (4) as (3)(a) and (b); designated the formerly undesignated paragraph beginning "Except as otherwise provides . . ." as (4), and rewrote the introductory paragraph; and deleted former (5) which provided that the Department of Public Safety could accept bank credit cards and debit cards in payment of fees for identification card renewals under certain circumstances.

### JUDICIAL DECISIONS

**2. Construction.**

Former Miss. Code Ann. § 63-1-21 did not impute the negligence of a permittee (under a learner's permit) to the licensed driver who was occupying the seat beside the permittee. The 2000 legislative amendments to § 63-1-21, specifically Miss. Code Ann. § 63-1-21(3) (2000), did not exist at the time of the accident in the case and thus were not applicable to impose any duty of supervision or liability upon the grandparent who was allowing the grandson to operate the grandparent's vehicle. Warren v. Glascoe, 880 So. 2d 1034 (Miss. 2004).

## § 63-1-23. Signature and verification of application for license of person under seventeen years of age by parents or other responsible person.

### ATTORNEY GENERAL OPINIONS

The term custody as used in this section means legal custody and therefore divorced parents who have joint legal custody would both have to sign the application of a person under the age of seventeen who is seeking a temporary driving permit, intermediate license or license. Busby, June 13, 2003, A.G. Op. 03-0288.

## § 63-1-25. Imputation of negligence or willful misconduct of driver under seventeen years of age to person signing application for license.

### JUDICIAL DECISIONS

**1. In general.**

Former Miss. Code Ann. § 63-1-21 did not impute the negligence of a permittee (under a learner's permit) to the licensed driver who was occupying the seat beside the permittee. The 2000 legislative amendments to § 63-1-21, specifically Miss. Code Ann. § 63-1-21(3) (2000), did not exist at the time of the accident in the case and thus were not applicable to impose any duty of supervision or liability upon the grandparent who was allowing the grandson to operate the grandparent's vehicle. Warren v. Glascoe, 880 So. 2d 1034 (Miss. 2004).

## § 63-1-31. Appeal from denial of application for license or temporary permit.

### ATTORNEY GENERAL OPINIONS

Although a justice court judge may not suspend the minimum fine upon a nolo contendere plea on a DUI, he does not have to impose a fine on first offense DUI if he imposes a jail sentence or attendance at a victim impact panel. Sartin, Dec. 9, 2005, A.G. Op. 05-0596.

## § 63-1-33. Examination of applicant for license or temporary permit; inspection of applicant's automobile; certification of successful completion of driver education and training program at secondary school in lieu of examination.

(1) Except as otherwise provided under subsection (6) of this section, it shall be the duty of the license examiner, when application is made for an operator's license or temporary driving permit, to test the applicant's ability to read and understand road signs and to give the required signals as adopted by the National Advisory Committee on Uniform Traffic Control Devices and the American Association of Motor Vehicle Administrators.

(2) Except as otherwise provided under subsection (6) of this section, the commissioner shall have prepared and administer a test composed of at least ten (10) questions relating to the safe operation of a motor vehicle and testing the applicant's knowledge of the proper operation of a motor vehicle. Every examination shall ensure adequate knowledge on the part of the applicant as to school bus safety requirements.

(3) Prior to the administration of the test, the license examiner shall inspect the horn, lights, brakes, inspection certificate and vehicle registration of the motor vehicle which the applicant expects to operate while being tested, and if he finds that any of the aforementioned items are deficient, no license or endorsement shall be issued to the applicant until same have been repaired.

(4) An applicant for a Mississippi driver's license who, at the time of application, holds a valid motor vehicle driver's license issued by another state shall not be required to take a written test.

(5) Except as otherwise provided by Section 63-1-6, when application is made for an original motorcycle endorsement or a restricted motorcycle operator's license, the applicant shall be required to pass a written test which consists of questions relating to the safe operation of a motorcycle and a skill test similar to the "Motorcycle Operator Skill Test," which is endorsed by the American Association of Motor Vehicle Administrators. The commissioner may exempt any applicant from the skill test if the applicant presents a certificate showing successful completion of a course approved by the commissioner, which includes a similar examination of skills needed in the safe operation of a motorcycle.

(6) The Department of Public Safety may accept the certification of successful completion of an individual's training in the knowledge and skills needed for the proper and safe operation of a motor vehicle from a driver education and training program at a secondary school that meets the standards of the department, in lieu of the department administering the examination of the individual for the purpose of obtaining a driver's license. The commissioner and the State Board of Education shall jointly promulgate rules and regulations for the administration of this subsection.

**SOURCES: Codes, 1942, § 8100; Laws, 1938, ch. 143; Laws, 1985, ch. 376, § 3; Laws, 1998, ch. 352, § 1; Laws, 1999, ch. 393, § 2; Laws, 2000, ch. 614, § 1; Laws, 2010, ch. 346, § 1; Laws, 2011, ch. 481, § 5, eff from and after July 1, 2011.**

**Editor's Note —** Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

**Amendment Notes —** The 2010 amendment added the subsection designations and the exceptions at the beginning in (1) and (2); and added (6).

The 2011 amendment added the last sentence in (2); and made a minor stylistic change.

## § 63-1-34. Provision of video-taped instructional material to assist reading impaired applicants in preparing for driver's license examinations.

From and after January 1, 1991, the Mississippi Authority for Educational Television shall prepare and the Commissioner of Public Safety shall make available for loan to applicants for driving permits and licenses under this article and under Article 5 of this chapter, who are reading impaired, video tapes of instructional material designed to assist such applicants in preparing for driver's license examinations. The commissioner shall be authorized to charge and collect a fee from any person to whom any such video tape is loaned, such fee to serve as security for the return of the video tape and which fee shall be refunded to the person upon return of the video tape to the commissioner. Such fee shall be in an amount as the commissioner determines necessary to

defray the actual cost to the commissioner in replacing the video tape but shall not exceed the amount of the fee provided by law to be paid for the issuance of the class of driver's license for which the person is applying. The video tape shall be returned, in good working order, to the location that such tape was borrowed in order for the individual to receive his security refund. In the event such tape is not returned within thirty (30) days from time of rental all security fees will be forfeited to the Department of Public Safety. Such security funds and all forfeited fees shall be placed in a separate interest-bearing account known as the "Driver License Educational Fund for the Reading Impaired." All forfeited security fees shall be used to replace unreturned tapes and to offset the cost of this program.

**SOURCES: Laws, 1990, ch. 319, § 1; Laws, 2009, ch. 560, § 29, eff from and after July 1, 2009.**

**Amendment Notes** — The 2009 amendment substituted "Article 5 of this chapter" for "Article 2 of this chapter" in the first sentence.

## § 63-1-35. Form of license; use of Social Security Number of licensee; photograph of licensee; renewal of license by electronic means; registered sex offender's license to identify licensee as sex offender; designation as veteran on license upon request of honorably discharged veteran.

(1) The Commissioner of Public Safety shall prescribe the form of license issued pursuant to this article which shall, among other features, include a driver's license number assigned by the Department of Public Safety. A licensee shall list his social security number with the department which shall cross reference the social security number with the driver's license number for purposes of identification. Additionally, each license shall bear a full-face color photograph of the licensee in such form that the license and the photograph cannot be separated. The photograph shall be taken so that one (1) exposure will photograph the applicant and the application simultaneously on the same film. The department shall use a process in the issuance of a license with a color photograph that shall prevent as nearly as possible any alteration, counterfeiting, duplication, reproduction, forging or modification of the license or the superimposition of a photograph without ready detection. The photograph shall be replaced by the department at the time of renewal. Drivers' licenses, including photographs appearing thereon, may be renewed by electronic means according to rules and regulations promulgated by the commissioner in conformity to Section 27-104-33.

(2) The commissioner shall prescribe the form of license issued pursuant to this article to licensees who are not United States citizens and who do not possess a social security number issued by the United States government. The license of such persons shall include a number and/or other identifying features.

(3) Any new, renewal or duplicate driver's license, temporary driving permit, intermediate license or commercial driver's license issued to a person

required to register as a sex offender pursuant to Section 45-33-25 shall bear a designation identifying the licensee or permittee as a sex offender.

(4) The commissioner is authorized to provide the new, renewal or duplicate driver's license, temporary driving permit, intermediate license or commercial driver's license to any honorably discharged veteran as defined in Title 38 of the United States Code, and such license or permit shall exhibit the letters "Vet" or any other mark identifying the person as a veteran. The veteran requesting the "Vet" designation shall present his DD-214 or equivalent document that includes a notation from the state Veterans Affairs Board that the applicant is a veteran.

**SOURCES: Codes, 1942, § 8103; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1968, ch. 540, § 1; Laws, 1981, ch. 453, § 1; Laws, 1985, ch. 376, § 13; Laws, 1996, ch. 466, § 1; Laws, 2001, ch. 535, § 1; Laws, 2002, ch. 584, § 6; Laws, 2007, ch. 392, § 16; Laws, 2011, ch. 467, § 2; Laws, 2012, ch. 561, § 2, eff from and after passage (approved May 25, 2012.)**

**Amendment Notes —** The 2007 amendment added (3).
The 2011 amendment rewrote (1).
The 2012 amendment added (4).
**Cross References —** Registration of sex offenders generally, see §§ 45-33-1 et seq.

## § 63-1-37. Issuance of duplicate license.

If a license or temporary driving permit issued under the provisions of this article is lost or destroyed, the licensee shall obtain from the commissioner a duplicate copy thereof and shall pay a fee in the amount of Five Dollars ($5.00) plus the applicable photograph fee for the first and each subsequent duplicate copy. The license or permit shall be marked "Duplicate."

All fees collected under this section, except photograph fees, shall be deposited into the State General Fund. Photograph fees collected under this section shall be deposited pursuant to the provisions of Section 63-1-43.

**SOURCES: Codes, 1942, § 8104; Laws, 1938, ch. 143; Laws, 1956, ch. 378, § 4; Laws, 1984, ch. 349; Laws, 1985, ch. 376, § 14 eff from and after July 1, 1985; Laws, 2001, ch. 535, § 2; Laws, 2002, ch. 584, § 1; Laws, 2011, ch. 467, § 3, eff from and after July 1, 2011.**

**Amendment Notes —** The 2011 amendment, in the first paragraph, substituted "If" for "In the event that" at the beginning, substituted "Five Dollars ($5.00)" for "Three Dollars ($3.00)," and deleted "duplicate copy and a fee in the amount of Eight Dollars ($8.00) plus the applicable photograph fee for the second" preceding "and each subsequent duplicate copy" near the end of the first sentence.

## § 63-1-43. Fees for licenses generally.

(1) The fee for receiving the application and issuing the regular driver's or operator's license and the fee for renewing the license shall be:

(a) Eighteen Dollars ($18.00) plus the applicable photograph fee for each applicant for a four-year license;

(b) Forty Dollars ($40.00) plus the applicable photograph fee for each applicant for an eight-year license;

(c) Three Dollars ($3.00) plus the applicable photograph fee for each applicant for a one-year license, except as provided in paragraph (d) of this subsection;

(d) Eighteen Dollars ($18.00) plus the applicable photograph fee for a license for an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government; and

(e) In addition to the fees required in paragraph (a) of this subsection, an applicant may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar ($1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

All originals and renewals of regular operators' licenses shall be in compliance with Section 63-1-47.

(2) The fee for receiving the application and issuing a motorcycle endorsement shall be Five Dollars ($5.00) when issued as an endorsement to a four-year license, and Ten Dollars ($10.00) when issued as an endorsement to an eight-year license. Motorcycle endorsements shall be valid for the same period of time as the applicant's operator's license.

(3) The fee for receiving the application and issuing a restricted motorcycle operator's license and the fee for renewing such license shall be:

(a) Eleven Dollars ($11.00) plus the applicable photograph fee for a four-year license;

(b) Eight Dollars ($8.00) plus the applicable photograph fee for a one-year license; and

(c) Twenty-two Dollars ($22.00) plus the applicable photograph fee for an eight-year license.

All originals and renewals of restricted motorcycle licenses shall be valid for the same period of time that an original regular driver's license may be issued to such person in compliance with Section 63-1-47.

(4) From and after January 1, 1990, every person who makes application for an original license or a renewal license to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as such terms are defined in Section 27-19-3, except for those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, shall, in lieu of the regular driver's license above provided for, apply for and obtain a Class D commercial driver's license. Except as otherwise provided in subsection (5) of this section, the fee for the issuance of a Class D commercial driver's license shall be Twenty-three Dollars ($23.00) plus the applicable photograph fee for a period of four (4) years; however, except as required under Article 5 of this chapter, no driver of a pickup truck shall be

required to have a commercial license regardless of the purpose for which the pickup truck is used.

Except as otherwise provided in subsection (5) of this section, all originals and renewals of commercial licenses issued under this section shall be valid for a period of four (4) years, in compliance with Section 63-1-47. Only persons who operate the above-mentioned vehicles in the course of the regular and customary business of the owner shall be required to obtain a Class D commercial operator's license, and persons operating such vehicles for private purposes or in emergencies shall not be required to obtain such license.

(5) The original and each renewal of a commercial driver's license issued under this section to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall be issued for a period of one (1) year for a fee of Eight Dollars ($8.00) plus the applicable photograph fee and shall expire one (1) year from the date of issuance. Such person may renew a commercial license issued under this section within thirty (30) days of expiration of the license.

(6) The Commissioner of Public Safety, by rule or regulation, shall establish a driver's license photograph fee which shall be the actual cost of the photograph rounded off to the next highest dollar. Monies collected for the photograph fee shall be deposited into a special photograph fee account which the Department of Public Safety shall use to pay the actual cost of producing the photographs. Any monies collected in excess of the actual costs of the photography shall be used by the department to defray the cost of future photography and driver's license technology initiatives.

**SOURCES: Codes, 1942, § 8102; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, § 7; Laws, 1948, ch. 343, § 5; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, § 3; Laws, 1958, ch. 493; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1973, ch. 383, § 1; Laws, 1981, ch. 453, § 2; Laws, 1985, ch. 376, § 4; Laws, 1989, ch. 482, § 23; Laws, 1992, ch. 469, § 1; Laws, 1994, ch. 588, § 8; Laws, 2001, ch. 535, § 3; Laws, 2002, ch. 584, § 5; Laws, 2009, ch. 560, § 30; Laws, 2010, ch. 423, § 1; Laws, 2011, ch. 468, § 2; Laws, 2012, ch. 433, § 1; Laws, 2012, ch. 483, § 1, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Section 1 of ch. 433, Laws of 2012, effective July 1, 2012 (approved April 19, 2012), amended this section. Section 1 of ch. 483, Laws of 2012, effective from and after July 1, 2009 (approved April 23, 2012), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109. which gives the Joint Legislative Committee on compilation, Revision and Publication of Legislation authority to integrate amendments so that all version of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012 meeting of the Committee.

**Amendment Notes —** The 2009 amendment substituted "Article 5 of this chapter" for "Article 2 of this chapter" both times it appears in the first paragraph of (4).

The 2010 amendment, in (1)(c), substituted "Eighteen Dollars ($18.00)" for "Eight Dollars ($8.00)" and "photograph fee for a license for an applicant" for "photograph fee for a one-year license for each applicant."

The 2011 amendment, effective October 1, 2011, added (1)(b), redesignated former (1)(b) and (c) as (1)(c) and (d), and made related changes; added "when issued as an

endorsement to a four-year license, and Ten Dollars ($10.00) when issued as an endorsement to an eight-year license" to the end of the first sentence of (2); added (3)(c); and made a minor stylistic change.

The first 2012 amendment (ch. 433), added (1)(e); and made a minor stylistic change.

The second 2012 amendment (ch. 483), substituted "used by the department to defray the cost of future photography and driver's license technology initiatives" for "deposited to the General Fund of the State of Mississippi" at the end of (6).

## § 63-1-45. Maintenance of records relating to application forms and fees; audit of forms and funds; receipt for fees; effect of dishonor of check; disposition of fees.

License examiners shall keep a complete record of all funds received from applicants upon forms to be prescribed and furnished by the department out of the operating funds of the department. Application forms shall be printed in book form and serially numbered and in such form that the original thereof may be transmitted by the license examiner to the commissioner, together with the renewal fee. A copy signed by the examiner shall be given to the applicant, and a copy shall be retained by the examiner. The license examiner shall, not later than ten (10) days from the date of an application, transmit the application, together with the fee, to the commissioner. The application blanks and funds shall be subject to audit at any time. The commissioner shall maintain records of all application forms on hand and issued to the examiners, who shall be charged therewith. The receipt provided for in this section shall be the only valid and recognized form of receipt for fees paid by applicants, and the receipt shall be sufficient in lieu of the renewed license for a period of sixty (60) days or until the renewed license has been issued to the applicant by the commissioner.

There shall be tendered with all applications for a temporary driving permit, temporary motorcycle driving permit, initial issuance of any license issued pursuant to this article, renewal licenses, duplicate licenses or any other services for which a fee is charged, the proper fee required by law by cash, certified check, money order or electronic payment as authorized under Section 27-104-33.

The Commissioner of Public Safety shall deposit the amount of fees, together with all fees for duplicate licenses, permits, delinquent fees and reinstatement fees collected by him into the General Fund of the State Treasury, in accordance with the provisions of Section 45-1-23(2); however, Seven Dollars ($7.00) of the fee derived from the fee charged for original and renewal operators' licenses imposed under Section 63-1-43(1) and Four Dollars ($4.00) of the fee derived from the fee charged for original and renewal Class D commercial drivers' licenses under Section 63-1-43(4) shall be deposited into a special fund that is created in the State Treasury. Monies in the fund may be expended pursuant to legislative appropriation solely for the purchase by the Mississippi Highway Safety Patrol of patrol cars, communications equipment and weapons.

**SOURCES: Codes, 1942, §§ 8102, 8114; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, §§ 7, 8; Laws, 1948, ch. 343, §§ 5, 6; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, §§ 3, 5; Laws, 1958, chs. 493, 509; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1968, ch. 541, § 1; Laws, 1976, ch. 396, § 5; Laws, 1978, ch. 422, § 1; Laws, 1985, ch. 376, § 17; Laws, 1992, ch. 469, § 2; Laws, 2011, ch. 467, § 4, eff from and after July 1, 2011.**

**Amendment Notes** — The 2011 amendment rewrote the third through sixth sentences in the first paragraph; and rewrote the second paragraph.

## § 63-1-47. Duration and expiration of licenses; release of applicant's school attendance records to department of public safety; suspension of license of certain students who drop out of school.

**[Effective until October 1, 2011, this section will read:]**

(1) Except as otherwise provided in this section, each applicant for an original license issued pursuant to this article, who is entitled to issuance of same, shall be issued a four-year license which will expire at midnight on the licensee's birthday.

(a) Except as otherwise provided in this section, all renewal licenses shall be for four-year periods and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) From and after January 1, 1990, no commercial driver's license shall be issued under the provisions of this article for any commercial motor vehicle, the lawful operation of which requires the driver to obtain a Class A, B or C commercial driver's license under Article 5 of this chapter; however, from time to time, the holder of a commercial license may apply for a commercial driver's license under Article 5 of this chapter; and, if he fails to pass the required test for such license, he shall be entitled to an extension of his license that shall be valid for one hundred twenty (120) days or until he again is tested under Article 5 of this chapter, whichever occurs first. The extension shall entitle the license holder to operate all vehicles which such license authorized him to operate prior to taking the required test. The first extension shall be without charge; however, a fee of Fifteen Dollars ($15.00) shall be imposed for any subsequent extension. No extension shall be valid past March 31, 1992.

(2) Any commercial driver's license issued under this article before January 1, 1990, which expires after March 31, 1992, shall be void on April 1, 1992, for the operation of any commercial vehicle requiring a commercial license to be issued under Article 5 of this chapter; however, if the holder of any such license applies for a commercial driver's license under Article 5 of this chapter, passes the required tests for such license, pays all applicable fees under Article 5 of this chapter except the Forty Dollars ($40.00) license fee and otherwise meets all requirements for the issuance of such license, then such person shall be issued a license under Article 5 of this chapter which shall expire on the expiration date of the commercial driver's license being replaced.

(3) The fee for the issuance of an original and renewals of a Class D commercial driver's license under this article to an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government and the period for which such license will be valid and expire shall be as prescribed in Section 63-1-43.

(4) The Commissioner of Public Safety shall notify, by United States mail addressed to the last known address of record with the Department of Public Safety, all holders of a commercial driver's license issued under this article before January 1, 1990, and which expire after March 31, 1992, that such license will be void on and after April 1, 1992, for the operation of any vehicle for which a commercial driver's license is required to be issued under Article 5 of this chapter.

(5) Any person holding a valid commercial driver's license issued under this article before January 1, 1990, shall continue thereafter, until expiration of such license, to be entitled to operate all vehicles which such license authorized him to operate immediately before January 1, 1990, except that from and after April 1, 1992, such license shall not entitle the licensee to operate a commercial motor vehicle the lawful operation of which requires a commercial driver's license under Article 5 of this chapter.

(6)(a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1)(g), and the documentation used in establishing compliance must be dated no more than thirty (30) days prior to the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license, intermediate license or temporary learning permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license, intermediate license or temporary learning permit that has been suspended under the provisions of this subsection be reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(7)(a) Any original or renewal license issued under this article to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (7) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred action status;

(ix) Has pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

**[Effective from and after October 1, 2011, this section will read:]**

(1) Except as otherwise provided in this section, each applicant for an original license issued pursuant to this article, who is entitled to issuance of same, shall be issued a four-year license or an eight-year license, at the option of the applicant, which will expire at midnight on the licensee's birthday.

(a) Except as otherwise provided in this section, all renewal licenses shall be for a four-year period or an eight-year period, at the option of the applicant, and may be renewed any time within six (6) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined.

(b) From and after January 1, 1990, no commercial driver's license shall be issued under the provisions of this article for any commercial motor vehicle, the lawful operation of which requires the driver to obtain a Class A, B or C commercial driver's license under Article 5 of this chapter; however, from time to time, the holder of a commercial license may apply for a commercial driver's license under Article 5 of this chapter; and, if he fails to pass the required test for such license, he shall be entitled to an extension of his license that shall be valid for one hundred twenty (120) days or until he again is tested under Article 5 of this chapter, whichever occurs first. The extension shall entitle the license holder to operate all vehicles which such license authorized him to operate prior to taking the required test. The first extension shall be without charge; however, a fee of Fifteen Dollars ($15.00) shall be imposed for any subsequent extension. No extension shall be valid past March 31, 1992.

(2) Any commercial driver's license issued under this article before January 1, 1990, which expires after March 31, 1992, shall be void on April 1, 1992, for the operation of any commercial vehicle requiring a commercial license to be issued under Article 5 of this chapter; however, if the holder of any such license applies for a commercial driver's license under Article 5 of this chapter, passes the required tests for such license, pays all applicable fees under Article 5 of this chapter except the Forty Dollars ($40.00) license fee and otherwise meets all requirements for the issuance of such license, then such person shall be issued a license under Article 5 of this chapter which shall expire on the expiration date of the commercial driver's license being replaced.

(3) The fee for the issuance of an original and renewals of a Class D commercial driver's license under this article to an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government and the period for which such license will be valid and expire shall be as prescribed in Section 63-1-43.

(4) The Commissioner of Public Safety shall notify, by United States mail addressed to the last known address of record with the Department of Public Safety, all holders of a commercial driver's license issued under this article before January 1, 1990, and which expire after March 31, 1992, that such license will be void on and after April 1, 1992, for the operation of any vehicle for which a commercial driver's license is required to be issued under Article 5 of this chapter.

(5) Any person holding a valid commercial driver's license issued under this article before January 1, 1990, shall continue thereafter, until expiration of such license, to be entitled to operate all vehicles which such license authorized him to operate immediately before January 1, 1990, except that from and after April 1, 1992, such license shall not entitle the licensee to operate a commercial motor vehicle the lawful operation of which requires a commercial driver's license under Article 5 of this chapter.

(6)(a) All applications by an operator under eighteen (18) years of age must be accompanied by documentation that the applicant is in compliance with the education requirements of Section 63-1-9(1) (g), and the documentation used in establishing compliance must be dated no more than thirty (30) days prior to the date of application.

(b) All applications by an operator under eighteen (18) years of age, if applicable, must be accompanied by documentation signed and notarized by the parent or guardian of the applicant and the appropriate school official, authorizing the release of the applicant's attendance records to the Department of Public Safety as required under Section 63-1-10.

(c) The commissioner shall suspend the driver's license, intermediate license or temporary learning permit of a student under eighteen (18) years of age who has been reported by the Department of Education as required by Section 63-1-10.1, and shall give notice of the suspension to the licensee as provided in Section 63-1-52(4). A school superintendent or designee may request that the driver's license, intermediate license or temporary learning permit that has been suspended under the provisions of this subsection be

reinstated after the student has successfully completed nine (9) weeks of school attendance without an unlawful absence.

(7)(a) Any original or renewal license issued under this article to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall expire four (4) years from the date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration. The fee for any such license and for renewal shall be as prescribed in Section 63-1-43.

(b) Any applicant for an original or renewal license under this subsection (7) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred action status;

(ix) Has pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

**SOURCES: Codes, 1942, § 8114; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1946, ch. 420, § 8; Laws, 1948, ch. 343, § 6; Laws, 1956, ch. 378, § 5; Laws, 1958, ch. 509; Laws, 1968, ch. 541, § 1; Laws, 1981, ch. 453, § 3; Laws, 1985, ch. 376, § 19; Laws, 1989, ch. 482, § 24; Laws, 1990, ch. 310, § 1; Laws, 1994, ch. 588, § 7; Laws, 2000, ch. 624, § 5; Laws, 2002, ch. 584, § 4; Laws, 2009, ch. 488, § 4; Laws, 2009, ch. 560, § 31; Laws, 2010, ch. 423, § 2; Laws, 2011, ch. 468, § 1, eff from and after Oct. 1, 2011.**

**Joint Legislative Committee Note —** Section 4 of ch. 448, Laws of 2009, effective July 1, 2009 (approved April 6, 2009), amended this section. Section 31 of ch. 560 Laws of 2009, effective from and after July 1, 2009 (approved April 17, 2009), also amended this section. As set out above, this section reflects the language of Section 31 of ch. 560, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2009 amendment (ch. 488), deleted "and who is eighteen (18) years of age or older" following "entitled to same" in (1); deleted "of operators eighteen (18) years of age or older" following "all renewal licenses" in (1)(a); added (6)(b) and designated the former provisions of (6) as (6)(a); and in (6)(a), deleted the former first three sentences, which read: "Except as otherwise provided in this article, each applicant for an original driver's license issued pursuant to this article, who is entitled to issuance of same, being under eighteen (18) years of age, shall be issued a one-year license which will expire at midnight on the licensee's birthday. Renewal drivers' licenses of operators under the age of eighteen (18) shall be for one-year periods and may be renewed any time within two (2) months before the expiration of the license upon application and payment of the required fee, unless required to be reexamined. An intermediate license shall be valid for one (1) year from its date of issue and may be renewed any time within fourteen (14) days before expiration of the license," substituted "under eighteen (18) years of age" for "under the age of eighteen (18)" and inserted "used in establishing compliance.

The second 2009 amendment (ch. 560), substituted "Article 5 of this chapter" for "Article 2 of this chapter" everywhere it appears in (1), (2), (4) and (5); in (1), deleted "and who is eighteen (18) years of age or older" following "issuance of same" in the introductory language, and deleted "of operators eighteen (18) years of age or older" following "renewal licenses" in (a); and rewrote (6).

The 2010 amendment added the (7)(a) designation, and therein rewrote the first sentence, which formerly read: "Any license issued under this article to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall expire one (1) year from the date of issuance and may be renewed, if such person is otherwise qualified to renew such license, within thirty (30) days of expiration"; and added (7)(b).

The 2011 amendment, effective October 1, 2011, inserted "or an eight-year license, at the option of the applicant" following "a four-year license" in (1); inserted "period or an eight-year period, at the option of the applicant" after "shall be for a four-year" in (1)(a); and made a minor stylistic change.

## § 63-1-49. Renewal of licenses.

(1) An expired license issued pursuant to this article may be renewed at any time within twelve (12) months after the expiration date of said license upon application and payment of the required fee, and the payment of a delinquent fee of One Dollar ($1.00), in lieu of a driver examination, unless the holder of the expired license is required to be examined, or unless the department has reason to believe the licensee is no longer qualified to receive a license. If any person shall obtain a new license, his last previous license having been good and valid, except for its lapsing, without his having obtained a renewal within the time required by law, then such reissuance of a license shall constitute a renewal of the previous license and not a new license.

(2)(a) Any person in the armed services of the United States, holding a valid license issued pursuant to this article and being out of state due to military service at the time the license expires, may renew the license by mail or by on-line renewal services or at any time within ninety (90) days after being discharged from such military service or upon returning to the state, without payment of any delinquent fee or examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license. Such person shall make proof by affidavit of the fact of such military service and of the time of discharge or return. The expiration of the

license of a military person under the provisions of this paragraph (a) shall not affect the validity of the license, but such license shall continue to be valid and permit such person to operate a motor vehicle for a period of ninety (90) days after he is discharged from military service or returns to the state or until he renews his license, whichever event first occurs.

(b) The provisions of paragraph (a) of this subsection (2) also apply to a dependent of a person in the armed services of the United States who is out of state due to military service if the dependent resides out of state with the armed services member and the license of the dependent expires during his or her absence from the state. The Commissioner of Public Safety may adopt such rules and regulations as may be necessary to implement the provisions of this paragraph.

(3) Any person holding a valid license issued pursuant to this article who is going overseas for two (2) to four (4) years and whose license shall expire during the stay overseas may renew said license for four (4) years prior to leaving. Said person shall make proof by affidavit of the fact of such overseas travel. Such reissuance of a license shall constitute a renewal of the previous license and not a new license.

**SOURCES: Codes, 1942, §§ 8102, 8114; Laws, 1938, ch. 143; Laws, 1940, chs. 157, 167; Laws, 1946, ch. 420, §§ 7, 8; Laws, 1948, ch. 343, §§ 5, 6; Laws, 1950, ch. 408, § 1; Laws, 1956, ch. 378, §§ 3, 5; Laws, 1958, chs. 493, 509; Laws, 1962, ch. 523; Laws, 1968, ch. 539, § 1; Laws, 1968, ch. 541, § 1; Laws, 1985, ch. 376, § 20; Laws, 1991, ch. 328 § 1; Laws, 1998, ch. 339, § 1; Laws, 2002, ch. 395, § 1; Laws, 2005, ch. 407, § 1, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment, in (2)(a) inserted "by mail or by on-line renewal services or" following "may renew the license" in the first sentence, and made minor stylistic changes; and substituted "a dependent" for "the spouse or a child" three times in (2)(b).

## § 63-1-51. Grounds and procedure for revocation of licenses; suspension of license for noncompliance with order for support.

(1) It shall be the duty of the court clerk, upon conviction of any person holding a license issued pursuant to this article where the penalty for a traffic violation is as much as Ten Dollars ($10.00), to mail a copy of abstract of the court record or provide an electronically or computer generated copy of abstract of the court record immediately to the commissioner at Jackson, Mississippi, showing the date of conviction, penalty, etc., so that a record of same may be made by the Department of Public Safety. The commissioner shall forthwith revoke the license of any person for a period of one (1) year upon receiving a duly certified record of each person's convictions of any of the following offenses when such conviction has become final:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) Any felony in the commission of which a motor vehicle is used;

(c) Failure to stop and render aid as required under the laws of this state in event of a motor vehicle accident resulting in the death or personal injury of another;

(d) Perjury or the willful making of a false affidavit or statement under oath to the department under this article or under any other law relating to the ownership or operation of motor vehicles;

(e) Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months;

(f) Contempt for failure to pay a fine or fee or to respond to a summons or citation pursuant to a charge of a violation of this title.

(2) The commissioner shall revoke the license issued pursuant to this article of any person convicted of negligent homicide, in addition to any penalty now provided by law.

(3) In addition to the reasons specified in this section, the commissioner shall be authorized to suspend the license issued to any person pursuant to this article for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SOURCES: Codes, 1942, §§ 8106, 8173; Laws, 1938, chs. 143, 200; Laws, 1940, ch. 167; Laws, 1956, ch. 379, § 1; Laws, 1968, ch. 373, § 1; Laws, 1971, ch. 515, § 26; Laws, 1985, ch. 376, § 21; Laws, 1986, ch. 500, § 50; Laws, 1995, ch. 506, § 2; Laws, 1996, ch. 527, § 12; Laws, 2009, ch. 372, § 1, eff from and after passage (approved Mar. 17, 2009.)**

**Amendment Notes —** The 2009 amendment substituted "duty of the court clerk" for "duty of the trial judge" near the beginning of (1).

**Cross References —** License may be suspended for conviction for second or subsequent violation of § 63-3-615, see § 63-3-615.

## ATTORNEY GENERAL OPINIONS

In order to have a conviction as required under this section there must be a charge of contempt filed by way of citation or warrant of arrest and a subsequent finding of guilt of contempt. Markopoulos, Nov. 15, 2004, A.G. Op. 04-0561.

## § 63-1-53. Notice to accused upon failure to respond to summons or citation, or failure to pay fine; notice to Commissioner of Public Safety; authority of commissioner to suspend license without preliminary hearing; notice of suspension; hearing.

(1) Upon failure of any person to respond timely and properly to a summons or citation charging such person with any violation of this title, or upon failure of any person to pay timely any fine, fee or assessment levied as a result of any violation of this title, the clerk of the court shall give written notice to such person by United States first-class mail at his last known address advising such person that, if within ten (10) days after such notice is deposited in the mail, the person has not properly responded to the summons or citation or has not paid the entire amount of all fines, fees and assessments levied, then the court will give notice thereof to the Commissioner of Public Safety and the commissioner may suspend the driver's license of such person. The actual cost incurred by the court in the giving of such notice may be added to any other court costs assessed in such case. If within ten (10) days after the notice is given in accordance with this subsection such person has not satisfactorily disposed of the matter pending before the court, then the clerk of the court immediately shall mail a copy of the abstract of the court record, along with a certified copy of the notice given under this subsection, to the commissioner, and the commissioner may suspend the driver's license of such person as authorized under subsections (2) and (3) of this section.

(2) The commissioner is hereby authorized to suspend the license of an operator without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction except under the provisions of the Mississippi Implied Consent Law;

(b) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(c) Is an habitually reckless or negligent driver of a motor vehicle;

(d) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(e) Is incompetent to drive a motor vehicle;

(f) Has permitted an unlawful or fraudulent use of such license;

(g) Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;

(h) Has failed to pay any fine, fee or other assessment levied as a result of any violation of this title;

(i) Has failed to respond to a summons or citation which charged a violation of this title; or

(j) Has committed a violation for which mandatory revocation of license is required upon conviction, entering a plea of nolo contendere to, or

adjudication of delinquency, pursuant to the provisions of subsection (1) of Section 63-1-71.

(3) Notice that a person's license is suspended or will be suspended under subsection (2) of this section shall be given by the commissioner in the manner and at the time provided for under Section 63-1-52, and upon such person's request, he shall be afforded an opportunity for a hearing as early as practicable, but not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner, or his duly authorized agent, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the commissioner shall either rescind any order of suspension or, good cause appearing therefor, may extend any suspension of such license or revoke such license.

(4) If a licensee has not paid all cash appearance bonds authorized under Section 99-19-3 or all fines, fees or other assessments levied as a result of a violation of this title within ninety (90) days after the commissioner has suspended the license of a person under subsection (2) (i) of this section, the court is authorized to pursue collection under Section 21-17-1(6) or 19-3-41(2) as for any other delinquent payment, and shall be entitled to collection of all additional fees authorized under those sections.

**SOURCES: Codes, 1942, § 8107; Laws, 1938, ch. 143; Laws, 1956, ch. 379, § 2; Laws, 1971, ch. 515, § 27; Laws, 1986, ch. 500, § 51; Laws, 1991, ch. 403, § 1; Laws, 1991, ch. 468 § 7; Laws, 1991, ch. 615 § 1; Laws, 1993, ch 487, § 1; Laws, 2009, ch. 499, § 1; Laws, 2010, ch. 517, § 1, eff from and after July 1, 2010.**

**Amendment Notes —** The 2009 amendment substituted "to the commissioner" for "to the Commissioner of Public Safety" near the end of (1); substituted "as early as practicable, but not to exceed" for "as early as practical within not to exceed" in the first sentence of (3); and added (4).

The 2010 amendment, in (4), inserted "all cash appearance bonds authorized under Section 99-19-3 or" and made a stylistic change.

**Cross References —** Municipal and justice courts authorized to purge judgment rolls of all fines and fees owed by deceased person upon proof of death, see § 9-1-47.

## ATTORNEY GENERAL OPINIONS

The purpose of Section 63-1-53 is to give a person 10 days to respond to a citation; therefore, it is necessary to wait until the 10-day period has expired before issuing a warrant. Reno, July 29, 2005, A.G. Op. 05-0264.

## § 63-1-55. Suspension of license of minor by trial judge; requirement of completion of defensive driving course; costs and assessments; procedure upon appeal of suspension.

### ATTORNEY GENERAL OPINIONS

Judge has the discretion over approval of the defensive driving school to be completed by a minor. Hood, Mar. 11, 2005, A.G. Op. 05-0032.

Miss. Code Ann. § 63-9-11(3)(d) clearly and unequivocally requires instruction of an approved traffic safety violator course by a human being when it specifies that the course "provide minimum qualifications for instructors." This requirement does not conflict with Miss. Code Ann. § 63-1-55 allowing computerized defensive driving instruction for minors. Dearing, March 2, 2007, A.G. Op. #07-00091, 2007 Miss. AG LEXIS 80.

## § 63-1-57. Driving while license or driving privilege cancelled, suspended or revoked.

### ATTORNEY GENERAL OPINIONS

Amending a charge of violation of § 63-11-40 to a violation of this section when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

## § 63-1-63. Permitting operation of vehicle by another person in violation of article.

### JUDICIAL DECISIONS

**1. In general.**

Trial court erred by denying a seller's motion for summary judgment in the parents' wrongful death action, as Mississippi law did not impose a duty on the seller, sufficient to support a negligence claim, to restrict motor vehicle sales to licensed drivers or to determine the competence of drivers as part of the sale; the son was not required to have an "E" endorsement on his license to purchase the motorcycle, but only to drive the motorcycle on a highway. Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897 (Miss. 2007).

## § 63-1-67. Renting motor vehicle to another.

### JUDICIAL DECISIONS

**1. Burden on rental car companies.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

Miss. Code Ann. § 63-1-67 only places a burden on rental car companies to accept

facially valid, unexpired driver's licenses. Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287 (Miss. 2007).

Rental car companies comply with Miss. Code Ann. § 63-1-67(1) by fulfilling their responsibilities as mandated under § 63-1-67(2) and (3). Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287 (Miss. 2007).

Because defendant rental car rental company complied with Miss. Code Ann. § 63-1-67 by checking a renter's facially valid license according to the procedures set forth in § 63-1-67(2) and (3) (even though the renter's license had been suspended), the trial judge did not err in granting summary judgment in favor of the car rental company on plaintiffs' negligence per se action. Cousin v. Enter. Leasing Company-South Cent., Inc., 948 So. 2d 1287 (Miss. 2007).

## § 63-1-71. Revocation or suspension of driving privilege of person convicted of violation of Uniform Controlled Substance Law or violation of similar law of another jurisdiction; reduction of suspension in hardship cases.

**Cross References —** Applicability of subsection (3) of this section to defendant who holds commercial driver's license or was operating commercial motor vehicle when violation occurred and who is charged with violating state of local traffic law other than parking violation, see § 63-1-222.

## § 63-1-73. Use of wireless communication device by person authorized to drive under intermediate license or temporary learning or driving permit while vehicle in motion or by person operating a passenger bus with minor passenger on bus prohibited; exceptions; penalties.

(1) For purposes of this section, the following terms shall have the meanings ascribed in this subsection, unless the context clearly indicates otherwise:

(a) "Cellular telephone" means an analog or digital wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radiophones.

(b) "Personal digital assistant" means a wireless electronic communication device that provides for data communication other than by voice.

(c) The term "E911" shall have the meaning ascribed in Section 19-5-303.

(d) "Wireless communication device" means a device that uses a commercial mobile service, as defined by 47 USC Section 332, including a cellular telephone or personal digital assistant.

(2)(a) A person who is authorized to drive under an intermediate license, a temporary learning permit or a temporary driving permit shall not operate a motor vehicle on a highway while using a wireless communication device to send or receive a written message while the motor vehicle is in motion.

(b) A person shall not use a wireless communication device while operating a passenger bus with a minor passenger on the bus, except for an emergency or in the case of a school bus driver for official school business or in an emergency.

(3) This section does not apply to any of the following:

(a) Law enforcement and safety personnel;

(b) Drivers of authorized emergency vehicles;

(c) A person who is reporting reckless or negligent behavior;

(d) A person who believes that the person or another person is in physical danger;

(e) Written messages sent or received while the vehicle is parked;

(f) The use of a wireless communication device for the sole purpose of communicating with any of the following regarding an emergency situation:

(i) An emergency response or E911 operator;

(ii) A hospital, physician's office or health clinic;

(iii) A provider of ambulance services;

(iv) A provider of fire fighting services;

(v) A law enforcement agency;

(g) The use of technology utilizing a cellular connection to a vehicle to relay vehicle operational information between the vehicle and a call center or repair facility; and

(h) A vehicle navigation system utilizing a cellular connection to update databases and provide real-time traffic information.

(4)(a) A violation of this section is a misdemeanor, and upon conviction, is punishable by a fine not to exceed Five Hundred Dollars ($500.00).

(b) If the person violates this section at the time that he is involved in a motor vehicle accident, then the violation is punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

(c) A law enforcement officer investigating a motor vehicle accident in which a person is cited for violating subsection (2)(a) or (b) of this section shall indicate on the written accident report the use of a wireless communication device in violation of this section at the time of the accident.

**SOURCES: Laws, 2009, ch. 488, § 5; Laws, 2011, ch. 481, § 2, eff from and after July 1, 2011.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (4)(c) by substituting "subsection (2)(a) or (b) of this section" for "subsection (2)(b) or (c) of this section." The Joint Committee ratified the correction at its July 13, 2011, meeting.

**Editor's Note** — A former § 63-1-73 [Laws, 1989, ch. 482, § 1, eff from and after January 1, 1990; Repealed by Laws, 2009, ch. 560, § 27, effective July 1, 2009] provided the short title for former Article 2 of this chapter pertaining to commercial driver's licensing. For present provisions relating to commercial driver's licensing, see the Commercial Driver's License Act, §§ 63-1-201 et seq.

Laws of 2009, ch. 488, § 6, provides:

"SECTION 6. The provisions of Section 5 of this act shall be codified in Chapter 1, Title 63, Mississippi Code of 1972."

Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

**Amendment Notes** — The 2011 amendment added (1)(c) and (d); rewrote (2), and (3); and rewrote (4)(c).

**Cross References** — Intermediate licenses and temporary permits, see §§ 63-1-9, 63-1-10 and 63-1-21.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 2.

MISSISSIPPI COMMERCIAL DRIVER'S LICENSE LAW.

SEC.
63-1-74 through 63-1-90. Repealed

## §§ 63-1-74 through 63-1-90. Repealed.

Repealed by Laws, 2009, ch. 560, § 27, effective July 1, 2009.

§ 63-1-74. [Laws, 1989, ch. 482, § 2, eff from and after January 1, 1990.]

§ 63-1-75. [Laws, 1989, ch. 482, § 3; Laws, 2003, ch. 485, § 8; Laws, 2005, ch. 541, § 3, eff from and after July 1, 2005.]

§ 63-1-76. [Laws, 1989, ch. 482, § 4, eff from and after January 1, 1990.]

§ 63-1-77. [Laws, 1989, ch. 482, § 5, eff from and after January 1, 1990.]

§ 63-1-78. [Laws, 1989, ch. 482, § 6; Laws, 1992, ch. 304 § 1; Laws, 2005, ch. 541, § 2, eff from and after July 1, 2005.]

§ 63-1-79. [Laws, 1989, ch. 482, § 7; Laws, 1992, ch. 467, § 1; Laws, 1995, ch. 407, § 1; Laws, 2004, ch. 322, § 1, eff from and after July 1, 2004.]

§ 63-1-80. [Laws, 1989, ch. 482, § 8, eff from and after January 1, 1990.]

§ 63-1-81. [Laws, 1989, ch. 482, § 9; Laws, 1997, ch. 588, § 20; Laws, 2002, ch. 388, § 2; Laws, 2005, ch. 541, § 9, eff from and after July 1, 2005.]

§ 63-1-82. [Laws, 1989, ch. 482, § 10; Laws, 1992, ch. 488, § 1; Laws, 2001, ch. 535, § 4; Laws, 2004, ch. 322, § 2; Laws, 2005, ch. 332, § 1; Laws, 2005, ch. 541, § 5, eff from and after July 1, 2005.]

§ 63-1-83. [Laws, 1989, ch. 482, § 11; Laws, 1996, ch. 507, § 14; Laws, 2005, ch. 541, § 4, eff from and after July 1, 2005.]

§ 63-1-84. [Laws, 1989, ch. 482, § 12, eff from and after January 1, 1990.]

§ 63-1-85. [Laws, 1989, ch. 482, § 13, eff from and after January 1, 1990.]

§ 63-1-86. [Laws, 1989, ch. 482, § 14, eff from and after January 1, 1990.]

§ 63-1-87. [Laws, 1989, ch. 482, § 15, eff from and after January 1, 1990.]

§ 63-1-88. [Laws, 1989, ch. 482, § 16, eff from and after January 1, 1990.]

§ 63-1-89. [Laws, 1989, ch. 482, § 17, eff from and after January 1, 1990.]

§ 63-1-90. [Laws, 1989, ch. 482, § 18, eff from and after January 1, 1990.]

**Editor's Note —** Former § 63-1-74 provided the purpose and construction of the article. For present similar provisions, see § 63-1-202.

Former § 63-1-75 provided definitions for terms used in the article. For present similar provisions, see § 63-1-203.

Former § 63-1-76 provided that no person who drives a commercial motor vehicle could have more than one (1) driver's license. For present similar provisions, see § 63-1-204.

Former § 63-1-77 required persons driving commercial motor vehicles to have commercial driver's license.

Former § 63-1-78 related to the applicability of provisions of the article. For present similar provisions relating to exemption of farm-related service industry employees, see § 63-1-207.

Former § 63-1-79 provided commercial driver's license qualification standards. For present similar provisions, see § 63-1-208.

Former § 63-1-80 related to nonresident commercial driver's licenses. For present similar provisions, see § 63-1-209.

Former § 63-1-81 related to the application for commercial driver's licenses. For present similar provisions, see § 63-1-210.

Former § 63-1-82 related to commercial driver's license content, classification, endorsement, and restrictions. For present similar provisions, see § 63-1-211.

Former § 63-1-83 related to the suspension of commercial driver's licenses. For present similar provisions, see § 63-1-216.

Former § 63-1-84 related to implied consent to tests for presence of alcohol in the blood. For present similar provisions, see § 63-1-224.

Former § 63-1-85 provided classifications of offenses under article and relationship to other laws. For present similar provisions, see § 63-1-225.

Former § 63-1-86 related to notification of state licensing authority of suspension, revocation, cancellation, etc. For present similar provisions, see § 63-1-212.

Former § 63-1-87 provided for reciprocity. For present similar provisions, see § 63-1-215.

Former § 63-1-88 related to full faith and credit of out-of-state convictions. For present similar provisions, see § 63-1-215.

Former § 63-1-89 related to the promulgation of rules and regulations by the commissioner of public safety.

Former § 63-1-90 provided for the use of inspection stations for commercial driver's license testing sites. For present similar provisions, see § 63-1-226.

Article 2 also contained a former § 63-1-73 (Laws, 1989, ch. 482, § 1, effective from and after January 1, 1990), which was repealed by Laws of 2009, ch. 560, § 27, effective July 1, 2009. A new § 63-1-73, enacted by Laws of 2009, ch. 488, § 5, effective from and after July 1, 2009, now appears in Article 1.

Repealed §§ 63-1-74 through 63-1-90 have been set out to correct an error in the 2009 Cumulative Supplement.

## ARTICLE 5.

## COMMERCIAL DRIVER'S LICENSE ACT.

SEC.

## § 63-1-201. Short title.

This article may be cited as the Commercial Driver's License Act.

**SOURCES: Laws, 2009, ch. 560, § 1, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-202. Statement of intent and purpose.

The purpose of this article is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (49 USCS Appx. Section 2701 et seq.), hereinafter referred to as "CMVSA," and thereby prevent the loss to the State of Mississippi of substantial federal highway funds as a penalty for failure to comply therewith.

This article is a remedial law which should be liberally construed to promote public health, safety and welfare. The provisions of Article 1 of this chapter, being the Highway Safety Patrol and Driver's License Law of 1938, and the provisions of Title 63, Chapter 11, Mississippi Code of 1972, being the Mississippi Implied Consent Law, including penalties for violations thereof, shall be applicable to the provisions of this article to the extent that such laws do not conflict with the provisions of this article. If any provisions of this article conflict with the provisions of the Highway Safety Patrol and Driver's License Law of 1938 or the Mississippi Implied Consent Law, then the provisions of this article shall control.

**SOURCES: Laws, 2009, ch. 560, § 2, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-203. Definitions.

As used in this article:

(a) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol.

(b) "Alcohol concentration" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means:

(i) The number of grams of alcohol per one hundred (100) milliliters of blood; or

(ii) The number of grams of alcohol per two hundred ten (210) liters of breath.

(c) "Commercial driver's license" or "CDL" means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR, Part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(d) "Commercial driver's license information system" or "CDLIS" means the CDLIS established by the Federal Motor Carrier Safety Administration (FMCSA) pursuant to Section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

(e) "Commercial learner's permit" means a permit issued pursuant to Section 63-1-208(5).

(f) "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(i) Has a gross combination weight rating of eleven thousand seven hundred ninety-four (11,794) kilograms or more (twenty-six thousand one (26,001) pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than four thousand five hundred thirty-six (4,536) kilograms (ten thousand (10,000) pounds);

(ii) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four (11,794) or more kilograms (twenty-six thousand one (26,001) pounds or more);

(iii) Is designed to transport sixteen (16) or more passengers, including the driver;

(iv) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(v) The term shall not include:

1. Authorized emergency vehicles as defined in Section 63-3-103;

2. Motor homes as defined in Section 63-3-103; however, this exemption shall only apply to vehicles used strictly for recreational, noncommercial purposes;

3. Military equipment owned or operated by the United States Department of Defense, including the National Guard, and operated by: active duty military personnel; members of the military reserves; members of the National Guard on active duty, including personnel on full-time National Guard duty; personnel on part-time National Guard training; National Guard military technicians (civilians who are required to wear military uniforms); and active duty United States Coast Guard personnel. This exception is not applicable to United States Reserve technicians;

4. Farm vehicles, which are vehicles:

a. Controlled and operated by a farmer;

b. Used to transport either agricultural products, farm machinery, farm supplies or both to or from a farm;

c. Not used in the operations of a common or contract motor carrier; and

d. Used within one hundred fifty (150) miles of the farm.

(g) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 USCS 802(6), and includes all substances listed on Schedules I through V of 21 Code of Federal Regulations, Part 1308, as they may be revised from time to time, any substance so classified under Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, and any other substance which would impair a person's ability to operate a motor vehicle.

(h) "Conviction" means an unvacated adjudication of guilt, or a determination by a judge or hearing officer that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated. Conviction shall also mean a plea of guilty or nolo contendere which has been accepted by the court.

(i) "Disqualification" means any of the following three (3) actions:

(i) The suspension, revocation or cancellation of a commercial driver's license by the state or jurisdiction of issuance;

(ii) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control, other than parking, vehicle weight or vehicle defect violations; or

(iii) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 CFR, Part 391.

(j) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle on a public highway or who is required to hold a commercial driver's license.

(k) "Employer" means any person, including the United States, a state, the District of Columbia or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

(*l*) "Foreign" means outside the fifty (50) United States and the District of Columbia.

(m) "Gross combination weight rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon.

(n) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(o) "Hazardous materials" means any material that has been designated as hazardous under 49 USCS Section 5103 and is required to be placarded under subpart F of 49 CFR, Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR, Part 73.

(p) "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(q) "Nonresident commercial driver's license" or "nonresident CDL" means a commercial driver's license issued by a state to an individual under either of the following two (2) conditions:

(i) To an individual domiciled in a foreign country meeting the requirements of 49 CFR, Part 383.23(b)(1); or

(ii) To an individual domiciled in another state meeting the requirements of 49 CFR, Part 383.23(b)(2).

(r) "Serious traffic violation" means conviction at any time when operating a commercial motor vehicle or at those times when operating a noncommercial motor vehicle when the conviction results in the revocation, cancellation, or suspension of the operator's license or operating privilege, of:

(i) Excessive speeding, involving a single charge of any speed fifteen (15) miles per hour or more, above the posted speed limit;

(ii) Reckless driving, as defined under state or local law;

(iii) Improper traffic lane changes, as defined in Section 63-3-601, 63-3-603, 63-3-613 or 63-3-803;

(iv) Following the vehicle ahead too closely, as defined in Section 63-3-619;

(v) A violation of any state law or local ordinance relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(vi) Operating a commercial motor vehicle without obtaining a commercial driver's license;

(vii) Operating a commercial motor vehicle without a commercial driver's license in the driver's possession;

(viii) Operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both.

(s) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction, that a driver, or a commercial motor vehicle, or a motor carrier operation, is out of service pursuant to 49 CFR, Part 386.72, 392.5, 395.13, 396.9 or compatible laws, or the North American Uniform Out-of-Service Criteria.

(t) "State of domicile" means that state where a person has a true, fixed and permanent home and principal residence and to which the person has the intention of returning whenever the person is absent.

(u) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 CFR, Part 171. However, they do not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(v) "United States" means the fifty (50) states and the District of Columbia.

**SOURCES: Laws, 2009, ch. 560, § 3, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."
**Federal Aspects —** Section 12007 of the Commercial Motor Vehicle Safety Act of 1986 [Pub. L. 99-570], see 49 USCS § 31309.

## § 63-1-204. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle shall have more than one (1) driver's license.

**SOURCES: Laws, 2009, ch. 560, § 4, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."
This section is set out above to correct an error in the 2009 Cumulative Supplement.

## § 63-1-205. Notification required by driver.

The driver of a commercial motor vehicle shall notify the state and employers of convictions as follows:

(a) **The state.** — Any driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the commissioner in the manner specified by the commissioner within thirty (30) days of the date of conviction.

(b) **Employers.** — Any driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the driver's employer in writing of the conviction within thirty (30) days of the date of conviction.

(c) **Notification of suspensions, revocations and cancellations.** — A driver whose driver's license is suspended, revoked, or cancelled by any state, who loses the privilege to drive a commercial motor vehicle in any

state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify the driver's employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) **Notification of previous employment.** — Any person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the ten (10) years preceding the date of application:

(i) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(ii) The dates between which the applicant drove for each employer; and

(iii) The reason for leaving that employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

**SOURCES: Laws, 2009, ch. 560, § 5, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-206. Employer responsibilities.

(1) Each employer shall require the applicant to provide the information specified in Section 63-3-205(c).

(2) No employer may knowingly allow, require, permit or authorize a driver to operate a commercial motor vehicle in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or cancelled by a state or has lost the privilege to operate a commercial motor vehicle in a state, or has been disqualified from operating a commercial motor vehicle;

(b) During any period in which the driver has more than one (1) CMV driver's license;

(c) During any period in which the driver, or the CMV the driver is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a federal, state or local law or regulation pertaining to railroad-highway grade crossings.

**SOURCES: Laws, 2009, ch. 560, § 6, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-207. Commercial driver's license required.

(1) Except when driving under a commercial learner's permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person:

(a) Holds a commercial driver's license;

(b) Is in immediate possession of the license; and

(c) The license has the applicable endorsements valid for the vehicle the person is driving.

(2) No person may be found to have committed a violation of subsection (1) of this section if the person provides proof to the court having jurisdiction of the traffic complaint that the individual held a commercial driver's license valid for the vehicle the person was driving on the date the complaint was issued.

(3) No person may drive a commercial motor vehicle while the person's driving privilege is suspended, revoked, or cancelled, while subject to a disqualification.

(4) No person may drive a commercial motor vehicle in violation of an out-of-service order.

(5)(a) Notwithstanding the provisions of this section, employees of farm-related service industries shall be exempt from the knowledge and skills tests required under this article, and shall be issued restricted commercial driver's licenses as long as the applicants meet the requirements of 49 CFR, Part 383, as amended from time to time, and upon payment of the appropriate fee.

(b) "Farm-related service industries" shall include farm retail outlets and suppliers, agri-chemical businesses, custom harvesters, and livestock feeders.

**SOURCES: Laws, 2009, ch. 560, § 7, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-208. Commercial driver's license qualification standards.

(1) Except as otherwise provided, the commissioner shall not issue a commercial driver's license and commercial learner's permit to any person under the age of twenty-one (21) years.

(2) No person may be issued a commercial driver's license unless that person is domiciled in this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 CFR, Part 383, subparts F, G and H and has satisfied all other requirements of Title XII of Public Law 99-570 in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted by the

commissioner. If the applicant wishes to have a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572.

(3) The commissioner may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency or instrumentality of local government, to administer the skills test specified by this section, provided:

(a) The test is the same as would otherwise be administered by the state; and

(b) The third party has entered into an agreement with this state which complies with requirements of 49 CFR, Part 383.75.

(4) A skills test may be waived as follows:

(a) The commissioner, by rules adopted pursuant to the Mississippi Administrative Procedures Law, may provide for a waiver of the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 CFR, Part 383.77;

(b) The rules may establish deadlines by which applicants must claim entitlement and qualification to skills test waivers and may provide for the scheduling of group knowledge testing.

(5) A commercial learner's permit shall be issued as follows:

(a) A commercial learner's permit may be issued to an individual who holds a valid driver's license from any jurisdiction who has passed the vision and written tests required for the class of license authorizing the operation of the type of vehicle for which the permit application is being made;

(b) The commercial learner's permit shall be issued for a period of six (6) months for a fee of Twelve Dollars ($12.00). Only one (1) renewal or reissuance may be granted within a two-year period. The holder of a commercial learner's permit may, unless otherwise disqualified, drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(6) A commercial driver's license, or commercial learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or cancelled in any state. A driver's license may not be issued to a person who has a commercial driver's license issued by any state unless the person first surrenders all driver's licenses issued by any state, which licenses shall be returned to the issuing states for cancellation.

(7) A person shall be entitled to take the test for a commercial driver's license unless the person's driver's license is, at the time of the requested test, suspended, revoked, cancelled or disqualified in any other state.

(8) Notwithstanding any requirement imposed by state law or state or federal regulations restricting the issuance of a commercial driver's license to a person suffering from diabetes, a person suffering from diabetes may be

issued a commercial driver's license if the person otherwise meets all qualifications for issuance provided:

(a) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

(i) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one (1) documented, symptomatic hypoglycemic reaction per month);

(ii) Able to and has demonstrated willingness to properly monitor and manage the person's diabetes; and

(iii) Not likely to suffer any diminution in driving ability due to the person's diabetic condition.

(b) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shall be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by the Department of Public Safety;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the person's employer for retention in the driver's qualification file and retain a copy of the certification on his person while driving for presentation to a duly authorized federal, state or local enforcement official.

(c) The commercial license issued under this subsection (8) will bear an endorsement restricting commercial driving on the license to driving only within the boundaries of Mississippi.

**SOURCES: Laws, 2009, ch. 560, § 8, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

**Cross References —** Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

**Federal Aspects —** Title XII of Public Law 99-570 [the Commercial Motor Vehicle Safety Act of 1986], see generally 49 USCS §§ 31301 et seq.

## § 63-1-209. Nonresident commercial driver's license.

The commissioner may issue a nonresident commercial driver's license to a person domiciled in a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and

licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 CFR, Part 383. In addition, the commissioner may issue a nonresident commercial driver's license to a person domiciled in a state while that state is prohibited from issuing commercial driver's licenses in accordance with 49 CFR, Part 384.405. The word "nonresident" must appear on the face of the nonresident commercial driver's license. An applicant shall surrender any nonresident commercial driver's license issued by another state. Prior to issuing a nonresident commercial driver's license, the commissioner shall establish the practical capability of revoking or suspending the nonresident commercial driver's license.

**SOURCES: Laws, 2009, ch. 560, § 9, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-210. Application for commercial driver's license.

(1) The application for a commercial driver's license or commercial learner's permit shall include the following:

(a) The full name and current mailing and residential addresses of the person.

(b) A physical description of the person, including sex, height and weight.

(c) Date of birth.

(d) The applicant's social security number.

(e) The person's signature.

(f) Certifications that:

(i) For an applicant who operates or expects to operate in interstate or foreign commerce or who is otherwise subject to 49 CFR, Part 391, the applicant meets the qualification requirements contained in Part 391; or for an applicant who operates or expects to operate entirely in intrastate commerce and who is not subject to Part 391, that the applicant is subject to state driver qualification requirements and is not subject to Part 391;

(ii) The motor vehicle in which the applicant's skills test will be taken is representative of the type of motor vehicle that the applicant operates or expects to operate;

(iii) The applicant is not subject to any disqualification under 49 CFR, Part 385.51, or any license suspension, revocation, or cancellation under state law; and

(iv) The applicant does not have a driver's license from more than one (1) state or jurisdiction.

(g) Any other information required by the commissioner, including, but not limited to, the names of all states or jurisdictions where the applicant has been licensed to operate any type of motor vehicle during the previous ten (10) years.

(h) The application shall be accompanied by a fee of Twenty-five Dollars ($25.00).

(2) When a licensee or permittee changes his or her name, mailing address, or residence or in the case of the loss, mutilation, or destruction of a license or permit, the licensee or permittee shall forthwith notify the commissioner and apply in person for a duplicate license or permit in the same manner as set forth in subsection (1) of this section. The fee for a duplicate license or permit shall be Six Dollars ($6.00).

(3) A person who has been a resident of this state for more than thirty (30) days shall not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(4) Any person who knowingly falsifies information or certifications required under subsection (1) of this section shall have the person's commercial driver's license revoked. Such persons may reapply for a commercial driver's license no sooner than sixty (60) days after the revocation.

(5)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for or renews a commercial driver's license or renewal of a commercial learner's permit under this article shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx. 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

**SOURCES: Laws, 2009, ch. 560, § 10, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-211. Commercial driver's license.

(1) **Contents of license.** — A commercial driver's license shall be marked "commercial driver's license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include, but not be limited to, the following information:

(a) The name and residential address of the person.

(b) The person's color photograph or imaged likeness.

(c) A physical description of the person including sex, height, and weight.

(d) Date of birth.

(e) Any number or identifier deemed appropriate by the commissioner.

(f) The person's signature.

(g) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions.

(h) The name of this state.

(i) The dates between which the license is valid.

(2) **Classifications, endorsements and restrictions.** — Driver's licenses may be issued with the following classifications, endorsements, and restrictions:

(a) **Classifications.** — Licensees may drive all vehicles in the class for which the license is issued and all lesser classes of vehicles, except those requiring special endorsements.

(i) Class A — Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand (10,000) pounds.

(ii) Class B — Any single vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand (10,000) pounds.

(iii) Class C — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds:

1. Vehicles designed to transport sixteen (16) or more passengers, including the driver; and

2. Vehicles used in the transportation of hazardous materials as defined in Section 63-1-203.

(iv) Class D — Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds except vehicles included in Class C or vehicles which require a special endorsement unless the proper endorsement appears on the license. Class D licenses shall not be commercial driver's licenses.

(b) Licenses may be issued with appropriate endorsements and restrictions noted thereon. The commissioner shall determine the manner of notation. Endorsements and restrictions may include, but are not limited, to those which:

(i) Authorize a driver to drive a vehicle transporting hazardous materials;

(ii) Restrict the driver to vehicles not equipped with air brakes when the person either fails the air brake component of the knowledge test or performs the skills test in a vehicle not equipped with air brakes;

(iii) Authorize driving motorcycles;

(iv) Authorize driving tank vehicles;

(v) Authorize driving vehicles carrying passengers;

(vi) Authorize driving school buses;

(vii) Authorize driving double trailers;

(viii) Restrict the driver to operation solely within this state. A commercial driver's license or commercial learner's permit with this restriction may be issued to any person who has attained the age of eighteen (18) years.

(3) Before issuing a commercial driver's license, the commissioner shall request the applicant's complete operating record from any state in which the applicant was previously licensed to operate any type of motor vehicle in the past ten (10) years, conduct a check of the applicant's operating record by querying the national driver register, established under 49 USCS Section 30302, and the commercial driver's license information system, established under 49 USCS Section 31309, to determine if:

(a) The applicant has already been issued a commercial driver's license; and the applicant's commercial driver's license has been suspended, revoked, or canceled;

(b) The applicant had been convicted of any offenses contained in Section 205(a) (3) of the National Driver Register Act of 1982 (23 USCS Section 401 note).

(4) Within ten (10) days after issuing a commercial driver's license, the commissioner shall notify the commercial driver license information system of that fact, providing all information required to ensure identification of the person.

(5) The commercial driver's license shall expire in the manner set forth in Section 63-1-47.

(6) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by Section 63-1-210, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed. In addition, the applicant must successfully complete the security threat assessment required by 49 CFR, Part 1572. If notice is received from the United States Transportation Security Administration that the applicant poses a security risk, the commissioner shall refuse to issue, or revoke within fifteen (15) days of receipt of the notice, a hazardous materials endorsement.

**SOURCES: Laws, 2009, ch. 560, § 11, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-212. Records; notification.

(1) After suspending, revoking, or disqualifying a person from holding a commercial driver's license, the commissioner shall update the person's

records to reflect that action within ten (10) days. After suspending, revoking or disqualifying a nonresident commercial driver's privileges, the commissioner shall notify the licensing authority of the state which issued the commercial driver's license or commercial driver certificate within ten (10) days, including in the notice both the disqualification period and the reason for the disqualification.

(2) Upon receipt from another jurisdiction of the prior record of an applicant for a commercial driver's license or a commercial learner's permit, the commissioner shall incorporate the prior record into the applicant's driver record and, in the case of adverse information, promptly implement any disqualification, licensing limitations, denials, and penalties that are required under 49 CFR, Part 384, that have not been applied by those jurisdictions where the applicant was previously licensed.

**SOURCES: Laws, 2009, ch. 560, § 12, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-213. Notification of traffic convictions.

When any person operating a commercial motor vehicle or who holds a commercial driver's license issued by another state is convicted in this state of any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, the commissioner shall notify the driver licensing authority in the licensing state of the conviction within ten (10) days of the date of conviction.

**SOURCES: Laws, 2009, ch. 560, § 13, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-214. Agreements.

The commissioner may enter into or make agreements, arrangements or declarations to carry out the provisions of this article.

**SOURCES: Laws, 2009, ch. 560, § 14, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-215. Reciprocity.

(1) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license issued by:

(a) Any state of the United States;

(b) Any province or territory of Canada in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses; or

(c) The Licensia Federal de Conductor issued by the Republic of Mexico, if the person's license is not suspended, revoked, or canceled and if the person is not disqualified from driving a commercial motor vehicle and is not in violation of an out-of-service order.

(2) The commissioner shall give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this article as if they occurred in this state.

(3) The commissioner shall record disqualifications and convictions received from other jurisdictions regarding Mississippi operators.

**SOURCES: Laws, 2009, ch. 560, § 15, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-216. Disqualification and suspension.

(1)(a) A person shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if convicted of a first violation of:

(i) Operating, attempting to operate, or being in actual physical control of a commercial motor vehicle on a highway with an alcohol concentration of four one-hundredths percent (0.04%) or more, or under the influence as provided in Section 63-11-30;

(ii) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(iii) Using a motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year;

(iv) Refusal to submit to a test to determine the operator's alcohol concentration, as provided in Title 63, Chapter 11, Mississippi Code of 1972;

(v) Operating, attempting to operate, or being in actual physical control of a motor vehicle on a highway with an alcohol concentration of eight one-hundredths percent (0.08%) or more, or under the influence of intoxicating liquor or other substance, as provided in Section 63-11-30;

(vi) Operating, attempting to operate, or being in actual physical control of a motor vehicle on a highway when the person is under the

influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely as provided in Section 63-11-30;

(vii) Operating or attempting to operate a commercial motor vehicle while the license is revoked, suspended, cancelled, or disqualified;

(viii) Operating a commercial motor vehicle in a negligent manner resulting in a fatal injury.

(b) A person shall be disqualified from driving a commercial motor vehicle for three (3) years if convicted of a violation listed in subsection (1) of this section, if the violation occurred while transporting a hazardous material required to be placarded.

(c) A person shall be disqualified from driving a commercial motor vehicle for life if convicted of two (2) or more violations or a combination of them listed in subsection (1) of this section arising from two (2) or more separate occurrences.

(d) A person shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) serious traffic violations, arising from separate incidents occurring within a three-year period. A disqualification for three (3) serious traffic violations must be imposed consecutively to any other previous period of disqualification.

(e) A person shall be disqualified from driving a commercial motor vehicle for life if the person uses a motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year involving the manufacture, distribution, or dispensing of a regulated drug, or possession with intent to manufacture, distribute, or dispense a regulated drug and for which the person was convicted.

(f) A person who is disqualified from driving a commercial motor vehicle shall surrender the person's Mississippi commercial driver's license no later than the effective date of the disqualification. Upon receipt of the person's commercial driver's license, that person, if otherwise eligible, may apply for a non-CDL, and upon payment of sufficient fees receive the driver's license.

(g) The commissioner shall adopt rules establishing guidelines, including conditions, under which a disqualification for life under this section, except for a disqualification issued pursuant to paragraph (e) of this subsection, may be reduced to a period of not less than ten (10) years.

(h) A person shall be disqualified from driving a commercial motor vehicle for a period of sixty (60) days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.

(i) A person shall be disqualified from driving a commercial motor vehicle for a period of one hundred twenty (120) days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in a separate incident.

(j) A person shall be disqualified from driving a commercial motor vehicle for a period of one (1) year if, during any three-year period, the driver

is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(k) A person who is simultaneously subject to a disqualification issued by the administrator of the Federal Motor Carrier Safety Administration pursuant to 49 CFR, Part 383.52 and a disqualification under any other provision of this section shall serve those disqualification periods concurrently.

(2)(a) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for one (1) year, if:

(i) The person is convicted of a first violation of operating, attempting to operate or being in actual physical control of a commercial motor vehicle on a highway with an alcohol concentration of four one-hundredths percent (0.04%) or more, or under the influence, as provided in Section 63-11-30; and

(ii) The person's commercial driver's license is issued by a state or country that does not issue commercial driver's licenses and disqualify persons in accordance with 49 CFR, Parts 383 and 384.

(b) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for three (3) years if the person is convicted of violating subsection (1) of this section, and the violation occurred while the person was transporting a hazardous material required to be placarded.

(c) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for life if the person is convicted a second time of violating subsection (1) of this section, and both convictions arise out of separate occurrences.

(d) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for sixty (60) days if the person is convicted of two (2) serious traffic violations, or for one hundred twenty (120) days if the person is convicted of three (3) serious traffic violations, arising from separate incidents occurring within a three-year period.

(e) A person's privilege to operate a commercial motor vehicle in the State of Mississippi shall be suspended for life if the person uses a commercial motor vehicle in the commission of any offense under state or federal law that is punishable by imprisonment for a term exceeding one (1) year, involving the manufacture, distribution, or dispensing of a regulated drug, or possession with intent to manufacture, distribute, or dispense a regulated drug, and for which the person was convicted.

(f) In addition to the reasons specified in this section for suspension of the commercial driver's license, the commissioner shall be authorized to suspend the commercial driver's license of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a commercial driver's license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a commercial driver's license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a

commercial driver's license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SOURCES: Laws, 2009, ch. 560, § 16, eff from and after July 1, 2009.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication corrected typographical errors in (1)(g) by substituting, "...under which a disqualification for life under this section, except for a disqualification issued pursuant to paragraph (e) of this subsection, may be reduced" for "...under which a disqualification for life under this section, except that a disqualification issued pursuant to paragraph (e) of this subsection may be reduced." The Joint Legislative Committee on Compilation, Revision and Publication of Legislation at their July 22, 2010, meeting.

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-217. Suspensions and disqualifications to run concurrently.

A suspension of a person's operating privilege or license and a disqualification imposed under Section 63-1-216 imposed for the same violation, shall run concurrently.

**SOURCES: Laws, 2009, ch. 560, § 17, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-218. Effective date of disqualification; hearing.

(1) A disqualification from driving a commercial motor vehicle shall be effective on not less than ten (10) days' notice.

(2) If requested, a hearing on the disqualification shall be conducted, under Section 63-1-53. The scope of the hearing shall be limited to verification of the conviction.

(3) A person aggrieved by a decision resulting from a hearing under this section may have the decision reviewed on the record. The appeal shall be to the Circuit Court of the First Judicial District of Hinds County or, in the discretion of the licensee, to the circuit court of the county in which the licensee resides or has a principal place of business.

**SOURCES: Laws, 2009, ch. 560, § 18, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-219. Disqualification from operation of vehicle.

(1) Any person convicted for violating an out-of-service order shall be disqualified as follows except as provided in subsection (2) of this section:

(a) A person shall be disqualified from driving a commercial motor vehicle for a period of ninety (90) days if convicted of a first violation of an out-of-service order.

(b) A person shall be disqualified for a period of one (1) year if convicted of a second violation of an out-of-service order during any ten-year period, arising from separate incidents.

(c) A person shall be disqualified for a period of three (3) years if convicted of a third or subsequent violation of an out-of-service order during any ten-year period, arising from separate incidents.

(2) Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial motor vehicle designed or used to transport sixteen (16) or more passengers, including the driver, shall be disqualified as follows:

(a) A person shall be disqualified for a period of one hundred eighty (180) days if convicted of a first violation of an out-of-service order.

(b) A person shall be disqualified for a period of three (3) years if convicted of a second or subsequent violation of an out-of-service order during any ten-year period, arising from separate incidents.

**SOURCES: Laws, 2009, ch. 560, § 19, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-220. Penalties.

(1) Notwithstanding any other provision of law to the contrary, any driver who violates or fails to comply with an out-of-service order is subject to a penalty of One Thousand Five Hundred Dollars ($1,500.00), in addition to disqualification under this article.

(2) Any employer who violates an out-of-service order, or who knowingly requires or permits a driver to violate or fail to comply with an out-of-service order, is subject to a penalty of Four Thousand Dollars ($4,000.00).

(3) The fine imposed for a speeding violation of a commercial motor vehicle operating in excess of fifteen (15) miles per hour over the legally posted speed limit on any highway shall be one and one-half (1-½) times the fine imposed for a speeding violation in other vehicles.

**SOURCES: Laws, 2009, ch. 560, § 20, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-221. Applicants for school bus endorsements.

(1) An applicant for a school bus endorsement shall satisfy the following requirements:

(a) Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(b) Pass the knowledge test covering the following topics, at minimum:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by state or federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and federal laws and regulations related to traversing safely highway rail grade crossings.

(c) Pass a skills test in a school bus of the same vehicle group as the applicant will operate.

(2) The department may waive the skills test required in subsection (1) (a) of this section for an applicant who:

(a) Is currently licensed, has experience operating a school bus, and has a good operating record;

(b) Certifies, and whose certification is verified by the department, that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid commercial driver's license with a passenger endorsement to operate a school bus representative of the group the applicant will be operating;

(ii) Has not had the applicant's operator's license or commercial driver's license suspended, revoked, or cancelled or been disqualified from operating a commercial motor vehicle;

(iii) Has not been convicted of any offense that would require disqualification under Section 63-1-216 or 49 CFR, Part 383.51(b);

(iv) Has not had more than one (1) conviction for a serious traffic violation while operating any type of motor vehicle;

(v) Has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver and provides evidence of such employment.

**SOURCES: Laws, 2009, ch. 560, § 21, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-222. Deferring imposition of sentence.

No judge or court may utilize the provisions of Section 63-1-71(3) or 63-9-11(3) or any other program to defer imposition of sentence or judgment if the defendant holds a commercial driver's license or was operating a commercial motor vehicle when the violation occurred and is charged with violating any state or local traffic law other than a parking violation.

**SOURCES: Laws, 2009, ch. 560, § 22, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-223. Penalty for authorizing railroad crossing violations.

Any employer who knowingly requires, allows, authorizes or permits a driver to operate a commercial motor vehicle in violation of Section 77-9-249 is subject to a penalty of not more than Four Thousand Dollars ($4,000.00).

**SOURCES: Laws, 2009, ch. 560, § 23, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-224. Implied consent to chemical tests; administration of tests; effect of refusal to submit to test.

(1) A person who holds a commercial driver's license and drives a motor vehicle within this state or a person who drives a commercial motor vehicle within this state for which a commercial learner's permit or a commercial driver's license is required under this article is deemed to have given his consent to a chemical test or tests of his breath for the purpose of determining the alcohol content of his blood. A person may give his consent to a chemical test or tests of his blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to drive a motor vehicle.

(2) The tests shall be administered, and all procedures and proceedings relating thereto shall be performed, as nearly as practicable, in accordance with the provisions of the Mississippi Implied Consent Law. However, from and after April 1, 1992, refusal of any such person to submit to such test or a test given which indicates that such person was driving such motor vehicle within this state with any measurable or detectable amount of alcohol in his system or while under the influence of a controlled substance shall require such person to be immediately placed out of service for twenty-four (24) hours and shall require suspension of the commercial driver's license of such person for the applicable period of time prescribed in this article.

**SOURCES: Laws, 2009, ch. 560, § 24, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."
**Cross References —** Mississippi Implied Consent Law, see §§ 63-11-1 et seq.

## § 63-1-225. Classification of offenses under this article; relationship to other laws.

Except as otherwise specifically provided by this article, any violation of this article for which the only penalty under this article is the requirement that the commissioner suspend the commercial learner's permit or commercial driver's license of a person shall not, for the purposes of this article, constitute a criminal offense. However, if a violation of this article also constitutes a criminal offense under the provisions of some other law, then any criminal penalty which may be imposed for violation of such criminal law shall be in addition to suspension of a person's license under this article.

If violation of any law of this state other than a violation of this article requires that the driver's license or driving privileges of a person be suspended, cancelled or revoked, then any suspension, cancellation or revocation imposed for violation of such law shall also result in suspension, revocation or cancellation of the person's commercial learner's permit or commercial driver's license under the provisions of this article for the same period of time and to run concurrently therewith.

If any person is disqualified under the provisions of this article and the violation is not an offense for which a person's driver's license or driving privilege is suspended, revoked or cancelled under the provisions of some law other than the provisions of this article, then the person may apply for and obtain, upon meeting all qualifications as required by law, any type of driver's license other than a commercial driver's license or commercial learner's permit issued under the provisions of this article.

**SOURCES: Laws, 2009, ch. 560, § 25, eff from and after July 1, 2009.**

**Editor's Note —** Laws of 2009, ch. 560, § 28, provides:
"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

## § 63-1-226. Use of certain facilities and property for commercial driver's license testing sites.

The commissioner is authorized to make use of the facilities and property upon which are located inspection stations, as prescribed in Sections 27-5-71 and 27-5-73, for the purpose of commercial driver's license testing sites under the Mississippi Commercial Driver's License Law. The State Tax Commission shall cooperate with the Commissioner of Public Safety in making such property and facilities available for such use; however, the use of the inspection

stations by the Commissioner of Public Safety shall not unreasonably interfere with the duties of the State Tax Commission.

**SOURCES: Laws, 2009, ch. 560, § 26, eff from and after July 1, 2009.**

**Editor's Note** — Laws of 2009, ch. 560, § 28, provides:

"It is the intent of the Legislature that Sections 1 through 26 of this act be codified as Article 5 of Title 63, Chapter 1, Mississippi Code of 1972."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## CHAPTER 2

## Mandatory Use of Safety Seat Belts

SEC.



### § 63-2-1. Requirement of use of safety seat belt system by operator and passengers in passenger motor vehicle; protection of children.

(1) When a passenger motor vehicle is operated in forward motion on a public road, street or highway within this state, every operator, every front-seat passenger and every child under seven (7) years of age who is not required to be protected by the use of a child passenger restraint device or system or a belt positioning booster seat system under the provisions of Sections 63-7-301 through 63-7-311, regardless of the seat that the child occupies, shall wear a properly fastened safety seat belt system, required to be installed in the vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard 208.

(2) "Passenger motor vehicle" for purposes of this chapter means a motor vehicle designed to carry fifteen (15) or fewer passengers, including the driver, but does not include motorcycles, mopeds, all-terrain vehicles or trailers.

(3) This section shall not apply to:

(a) Vehicles which may be registered for "farm" use, including "implements of husbandry" as defined in Section 63-21-5(d), and "farm tractors" as defined in Section 63-3-105(a);

(b) An operator or passenger possessing a written verification from a licensed physician that he is unable to wear a safety belt system for medical reasons;

(c) A passenger car operated by a rural letter carrier of the United States Postal Service or by a utility meter reader while on duty; or

(d) Buses.

**SOURCES: Laws, 1990, ch. 436, § 1; Laws, 1998, ch. 501, § 1; Laws, 2008, ch. 520, § 2, eff from and after July 1, 2008.**

**Amendment Notes —** The 2008 amendment rewrote (1).

### JUDICIAL DECISIONS

.5. Applicability.
1. Preservation for review.

**.5. Applicability.**

In a personal injury action, the trial court properly refused to grant certain jury instructions because the seat belt law—Miss. Code Ann. § 63-2-1(2)—did not apply to a shuttle bus carrying more than 15 passengers, and the bus owner could not have been subjected to a claim of contributory negligence because of the provisions of Miss. Code Ann. § 63-2-3. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242 (Miss. Ct. App. 2010).

**1. Preservation for review.**

Defendant's convictions for driving under the influence of an intoxicating liquor, careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840 (Miss. Ct. App. 2007).

### ATTORNEY GENERAL OPINIONS

A law enforcement officer may stop a motorist for a seatbelt violation and upon noticing another violation or some other illegal activity, the officer may cite the motorist for the other violation and the seatbelt violation. Phillips, Aug. 12, 2005, A.G. Op. 05-0419.

## § 63-2-3. Duty, standard of care, right or liability between operator and passenger; contributory or comparative negligence; entry of violation on driving record.

### JUDICIAL DECISIONS

1. In general.
2. Evidence.

**1. In general.**

In a personal injury action, bus owner's voluntary enactment of a seat-belt policy, not required by statute, did not vitiate the protection of Miss. Code Ann. § 63-2-3 that would be in place were its passengers required by statute to wear seat belts. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242 (Miss. Ct. App. 2010).

In a personal injury action, the trial court properly refused to grant certain jury instructions because the seat belt law—Miss. Code Ann. § 63-2-1(2)—did not apply to a shuttle bus carrying more than 15 passengers, and the bus owner could not have been subjected to a claim of contributory negligence because of the provisions of Miss. Code Ann. § 63-2-3. Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242 (Miss. Ct. App. 2010).

**2. Evidence.**

Trial court was correct to admit evidence tending to show that the family of a minor girl injured in a car accident did not regularly use their seat belts, but it should have given a cautionary instruction that the evidence was admissible for the limited purpose of showing that, even if the warnings had been adequate, the family would not have heeded them. Palmer v. Volkswagen of Am., Inc., 904 So. 2d 1077 (Miss. 2005).

## § 63-2-5. Education program; erection of highway signs notifying public of seat-belt-use requirement; notices of requirement accompanying vehicle license tags or decals.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-2-7. Offenses and penalties; recording of violations.

(1) A violation of this chapter shall be a misdemeanor, punishable by a fine of Twenty-five Dollars ($25.00) upon conviction; however, only the operator of a vehicle may be fined for a violation of this chapter by the operator, for a violation of this chapter by a front seat passenger or for a violation of this chapter by a child who is under seven (7) years of age and who is not required to be protected by the use of a child passenger restraint device or system or a belt positioning booster seat system under the provisions of Sections 63-7-301 through 63-7-311, regardless of the seat that the child occupies. The maximum fine that may be imposed against the operator of a vehicle for a violation of this chapter by the operator or for a violation of this chapter by one or more passengers shall be Twenty-five Dollars ($25.00) in the aggregate.

(2) A violation of this chapter shall not be entered on the driving record of any individual so convicted, nor shall any state assessment provided for by Section 99-19-73, or any other state law, be imposed or collected.

**SOURCES: Laws, 1990, ch. 436, § 4; Laws, 1994, ch. 567, § 1; Laws, 1998, ch. 501, § 2; Laws, 2006, ch. 302, § 1; Laws, 2008, ch. 520, § 3, eff from and after July 1, 2008.**

**Editor's Note —** Laws of 2006, ch. 302, § 2 provides as follows:

"SECTION 2. All federal money that the State of Mississippi receives as an incentive grant for the enactment of a primary seat belt law under Section 1 of House Bill No. 409, 2006 Regular Session, shall be expended for highway safety infrastructure improvements except as otherwise conditioned or restricted by federal law or federal rules and regulations governing the expenditure of such funds."

**Amendment Notes —** The 2006 amendment rewrote (1) to delete the provisions that permit a fine to be imposed for a violation of the seat belt law only if the violator is also charged and convicted of some other offense.

The 2008 amendment rewrote the first sentence of (1).

## CHAPTER 3

## Traffic Regulations and Rules of the Road

ARTICLE 1.

GENERAL PROVISIONS.

## § 63-3-5. Application of provisions of chapter relating to operation of vehicles.

### ATTORNEY GENERAL OPINIONS

Accident reports should be made for accidents occurring in parking lots. Conerly, Jan. 23, 2004, A.G. Op. 04-0002.

ARTICLE 3.

DEFINITIONS.



VEHICLES, EQUIPMENT AND THE LIKE DEFINED

SEC.
63-3-103. Vehicles.

## § 63-3-103. Vehicles.

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "motor vehicle" shall not include electric personal assistive mobility devices.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor.

(d) "Authorized emergency vehicle" means every vehicle of the fire department (fire patrol), every police vehicle, every 911 Emergency Communications District vehicle, every such ambulance and special use EMS vehicle as defined in Section 41-59-3, every Mississippi Emergency Management Agency vehicle as is designated or authorized by the Executive Director of MEMA and every emergency vehicle of municipal departments or public service corporations as

is designated or authorized by the commission or the chief of police of an incorporated city.

(e) "School bus" means every motor vehicle operated for the transportation of children to or from any school, provided same is plainly marked "School Bus" on the front and rear thereof and meets the requirements of the State Board of Education as authorized under Section 37-41-1.

(f) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle and includes travel trailers, fifth-wheel trailers, camping trailers, truck campers and motor homes.

(g) "Motor home" means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(h) "Electric assistive mobility device" means a self-balancing two-tandem wheeled device, designed to transport only one (1) person, with an electric propulsion system that limits the maximum speed of the device to fifteen (15) miles per hour.

**SOURCES: Codes, 1942, § 8127; Laws, 1938, ch. 200; Laws, 1973, ch. 338, § 1; Laws, 1976, ch. 348; Laws, 1980, ch. 316, § 2; Laws, 1983, ch. 350, § 1; Laws, 1986, ch. 459, § 35; Laws, 2000, ch. 318, § 1; Laws, 2003, ch. 485, § 9; Laws, 2004, ch. 425, § 3; Laws, 2012, ch. 452, § 1, eff from and after passage (approved Apr. 18, 2012.)**

**Amendment Notes —** The 2012 amendment added "every Mississippi Emergency Management Agency vehicle as is designated or authorized by the Executive Director of MEMA" following "as defined in Section 41-59-3" in (d).

### ATTORNEY GENERAL OPINIONS

A device must be able to stand on its own without the aid of a stand or other similar mechanic prop to meet the definition of "electric personal assistive mobility device." Hedglin, Mar. 5, 2004, A.G. Op. 04-0092.

Four-wheelers, all terrain vehicles, go carts, dune buggies, golf carts, and riding lawn mowers [unless qualifying as an implement of husbandry] are "motor vehicles" and therefor require tags, inspection stickers, proper equipment and insurance. Gay, July 25, 2006, A.G. Op. 06-0305.

## GOVERNMENTAL AGENCIES, OWNERS, POLICE OFFICERS AND OTHER PERSONS DEFINED

Sec.
63-3-121. Individuals.

## § 63-3-121. Individuals.

(a) "Person" means every natural person, firm, copartnership, association, corporation, limited liability company or other legal business entity.

(b) "Driver" means every person who drives or is in actual physical control of a vehicle.

(c) "Owner" means a person who holds the legal title of a vehicle; in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(d) "Pedestrian" means any person afoot or a person who uses an electric personal assistive mobility device or a manual or motorized wheelchair.

(e) "Instructor" means any person who gives instruction in a course related to this Title 63, whether given in person, recorded, transmitted by electronic means, or any combination thereof.

**SOURCES: Codes, 1942, § 8134; Laws, 1938, ch. 200; Laws, 2003, ch. 485, § 10; Laws, 2012, ch. 544, § 3, eff from and after passage (approved May 26, 2012.)**

**Editor's Note —** Laws of 2012, ch. 544, § 4 provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

**Amendment Notes —** The 2012 amendment added "limited liability company or other legal business entity" and made a related grammatical change in the introductory language in (a); and added (e).

HIGHWAYS, DISTRICTS, SIGNALS, AND THE LIKE DEFINED

## § 63-3-133. Traffic signals or devices.

### JUDICIAL DECISIONS

**1. Jury instructions.**

Trial court erred in its ruling related to Miss. Code Ann. § 63-3-313 and in refusing to give a jury instruction based on this statute, but the error was harmless because the weight of the evidence was against the driver who requested the instruction in a personal injury trial that arose out of a car accident. Etheridge v. Harold Case & Co., 960 So. 2d 474 (Miss. Ct. App. 2006), writ of certiorari denied by 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

ARTICLE 5.

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

## § 63-3-201. Offenses and penalties generally.

### ATTORNEY GENERAL OPINIONS

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

## § 63-3-211. Enactment of traffic regulations by local authorities.

### ATTORNEY GENERAL OPINIONS

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Community college police have the powers of a constable pursuant to Miss Code Ann. § 37-29-275 and are authorized to enforce state laws within their jurisdiction, but do not have authority to enforce municipal or campus ordinances on municipal streets that run through the campus. Campus police officers may assist in the enforcement of municipal parking ordinances on municipal streets by notifying municipal authorities when violations occur. A determination of the validity of "campus tickets" may only be made by a court of competent jurisdiction. Graham, March 16, 2007, A.G. Op. #07-00138, 2007 Miss. AG LEXIS 102.

ARTICLE 7.

TRAFFIC SIGNS, SIGNALS AND MARKINGS.

## § 63-3-303. Placing and maintaining of traffic-control devices upon state and county highways; placement of devices upon such highways by local authorities.

### JUDICIAL DECISIONS

**1. In general.**

Because Miss. Code Ann. § 65-1-65 and Miss. Code Ann. § 63-3-303 do not impose any specific directives as to the time, manner, and conditions for carrying out the Mississippi Transportation Commission's duty in maintaining highways or posting traffic-control or warning devices, those duties are not ministerial in nature but are discretionary. Further, the duty to maintain highways and place warning signs clearly requires the Mississippi Transportation Commission to consider the policy considerations of doing so. Knight v. Miss. Transp. Comm'n, 10 So. 3d 962 (Miss. Ct. App. 2009).

Summary judgment was properly awarded to the Mississippi Transportation Commission (MTC) in appellants' action for injuries and death resulting from a two-vehicle collision because the MTC's duty to place warning signs was discre-

tionary under Miss. Code Ann. § 63-3-303; hence, the MTC's failure to place warning signs was shielded from liability according to Miss. Code Ann. § 11-46-9(1)(d). Willingham v. Miss. Transp. Comm'n, 944 So. 2d 949 (Miss. Ct. App. 2006).

Clear meaning of Miss. Code Ann. § 63-3-303 is to create a statutory duty that must be carried out in a discretionary matter. Willingham v. Miss. Transp. Comm'n, 944 So. 2d 949 (Miss. Ct. App. 2006).

## § 63-3-305. Placing and maintaining of traffic-control devices upon highways under local jurisdiction.

### JUDICIAL DECISIONS

2.5. Jury instructions.
3.5. Liability under statute.

**2.5. Jury instructions.**

Trial court did not err in refusing to instruct the jury that a driver was required to reduce his speed as he approached a special hazard as required by Miss. Code Ann. § 63-3-505, because the instructions as a whole adequately instructed the jury as to the duties of the driver and § 63-3-505 did not tie into the facts of the case as the driver struck the individual when passing the individual and the individual began to make a left-hand turn. Good v. Indreland, 910 So. 2d 688 (Miss. Ct. App. 2005).

**3.5. Liability under statute.**

While Miss. Code Ann. § 63-3-305 contains the term "shall", it also contains the phrase, "as they may deem necessary", which, as state legal precedent suggests, means that a local authority's placement of traffic control devices is a discretionary duty. Because the placement of traffic control devices, including road construction signs, is a discretionary duty, Miss. Code Ann. § 11-46-9(1)(d) applies, and a county cannot be liable with regard to the placement of such signs, regardless of whether or not it abused its discretion in doing so. Dozier v. Hinds County, 379 F. Supp. 2d 834 (S.D. Miss. 2005).

Mississippi county was fraudulently joined in a suit, arising out of a fatal car accident because: (1) the county did not have any legal responsibility with regard to the posting of a stop sign at the intersection where the accident occurred, (2) Miss. Code Ann. § 63-3-305 granted discretionary authority to the county to place and maintain traffic control devices upon highways within the county, (3) under Miss. Code Ann. § 11-46-9(1)(d), the county could not be held liable for its exercise of discretionary power under Miss. Code Ann. § 63-3-305, even if an abuse of discretion was shown, and (4) although there was precedent under Mississippi law to hold municipalities liable, either under Miss. Code Ann. § 11-46-9(1)(b) or (1)(w), for failing to warn about known dangerous conditions on roads, no reasonable factfinder would find that the motorist who caused the accident was not adequately warned about the approaching intersection. Dozier v. Hinds County, 379 F. Supp. 2d 834 (S.D. Miss. 2005).

### ATTORNEY GENERAL OPINIONS

The mandate to maintain pavement markings and advance warning signs at public railroad crossing intersections on roads under local jurisdiction carries with it the responsibility to pay for this continued maintenance. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

A local jurisdiction, in the exercise of its sound discretion, is responsible for paying for the materials and the installation of pavement markings and advance warning signs at public railroad crossing intersections on roads under local jurisdiction; both the materials and the installation of same are subject to approval by the Department of Transportation. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

If the public roadway/railroad crossing

involves roads which are under different jurisdictions, the funding responsibilities should be allocated proportionately among the respective jurisdictions. Brown, Apr. 4, 2003, A.G. Op. #02-0769.

## § 63-3-307. Reflectors on bridges in state highway system.

### ATTORNEY GENERAL OPINIONS

A driver turning left at a T-intersection onto a one-way street must signal his intention to turn for a reasonable distance. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

Where a solid white line marks a turn lane, a driver in such lane must signal his intention to turn for a reasonable distance as determined by all the facts and circumstances then present. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

Where a driver is in a turn lane controlled by a green arrow or is approaching a T-intersection from a two-way street that intersects with a one-way street, where there is no option other than turning left, the driver must signal his intention to turn for a reasonable distance. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

A driver is allowed to make a lane change if the movement can be made with reasonable safety and the driver gives a signal if any other vehicle may be affected by such movement. Phillips, Apr. 8, 2005, A.G. Op. 05-0077.

## § 63-3-313. Disobedience of official traffic-control devices.

### JUDICIAL DECISIONS

**1. In general.**

Trial court erred in its ruling related to Miss. Code Ann. § 63-3-313 and in refusing to give a jury instruction based on this statute, but the error was harmless because the weight of the evidence was against the driver who requested the instruction in a personal injury trial that arose out of a car accident. Etheridge v. Harold Case & Co., 960 So. 2d 474 (Miss. Ct. App. 2006), writ of certiorari denied by 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

## § 63-3-315. Obedience of official traffic-control devices by emergency vehicles.

### JUDICIAL DECISIONS

**1. In general.**

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. Davis v. Latch, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Deputy, who stopped at an intersection and, with his blue lights and sirens activated, slowly proceeded across in a stop-and-start fashion, exercised sufficient safety measures to prompt other drivers near the intersection to yield the right-of-way, including the driver traveling in the lane ahead of plaintiffs. Thus, viewing the evidence in the light most favorable to plaintiffs, the deputy's conduct did not

demonstrate a conscious indifference to consequences, nor did it rise to the level of reckless disregard for the safety and well-being of persons not engaged in criminal activity, so as subject the county to liability under Miss. Code Ann. § 11-46-9(1)(c). Rayner v. Pennington, 25 So. 3d 305 (Miss. 2010).

ARTICLE 9.

ACCIDENTS AND REPORTS.

SEC.



## § 63-3-401. Duties of driver involved in accident resulting in personal injury or death; offenses and penalties.

(1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 63-3-405.

(2) Every stop under the provisions of subsection (1) of this section shall be made without obstructing traffic or endangering the life of any person more than is necessary.

(3) Except as provided in subsection (4) of this section, if any driver of a vehicle involved in an accident that results in injury to any person willfully fails to stop or to comply with the requirements of subsection (1) of this section, then such person, upon conviction, shall be punished by imprisonment for not less than thirty (30) days nor more than one (1) year, or by fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

(4) If any driver of a vehicle involved in an accident that results in the death of another or the mutilation, disfigurement, permanent disability or the destruction of the tongue, eye, lip, nose or any other limb, organ or member of another willfully fails to stop or to comply with the requirements under the provisions of subsection (1) of this section, then such person, upon conviction, shall be guilty of a felony and shall be punished by imprisonment for not less than five (5) nor more than twenty (20) years, or by fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

(5) The commissioner shall revoke the driver's license of any person convicted under this section.

**SOURCES: Codes, 1942, § 8161; Laws, 1938, ch. 200; Laws, 1996, ch. 461, § 1; Laws, 2010, ch. 374, § 1, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment substituted "imprisonment for not less than five (5) nor more than twenty (20) years" for "imprisonment for not less than one (1) year nor more than five (5) years" in (4).

## § 63-3-411. Duties of drivers involved in accidents involving injury or death or property damage of $500 or more to report accidents; supplemental reports; investigations and reports by law enforcement officers.

### ATTORNEY GENERAL OPINIONS

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

## § 63-3-415. Accident report forms.

### ATTORNEY GENERAL OPINIONS

Traffic accident reports prepared by law enforcement agencies are subject to the confidentiality requirements of Section 63-3-417 and they are not available to the general public pursuant to the Mississippi Public Records Act. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

## § 63-3-417. Disclosure of information in accident reports; fraudulently obtaining information contained in report; penalties.

(1) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and, except as otherwise provided in this section, shall be for the confidential use of the department; however, the department may, upon written request of any person involved in an accident, the spouse or next of kin of any such person, or any person against whom a claim is made as a result of the accident or upon written request of the representative of his estate, disclose to such requester or his legal counsel or a representative of his insurer any information contained in such report except the parties' version of the accident as set out in the written report filed by such parties, or may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. The admissibility of an accident report into evidence in any court shall be governed by the Mississippi Rules of Evidence. However, the department shall furnish, upon demand of any person who has, or claims to

have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department.

(2)(a) Notwithstanding the provisions of subsection (1) of this section or the provisions of any other law to the contrary, the department may supply vehicle-specific accident data to any person or entity, in bulk electronic form, for the purpose of compiling vehicle history reports for use by law enforcement, consumers and businesses. The department may charge and collect fees at a negotiated price established by the department for providing such data; however, the department may not agree to grant to any person or entity an exclusive right to receive information or data under this subsection. A person or entity that requests access to such data must agree, in writing, to use information obtained from such data only for the purpose of identifying vehicles that have been involved in accidents and any damage to those vehicles. A person or entity obtaining such data may not use such information to identify or contact persons or individuals.

(b) The department shall retain and deposit into a special fund that is hereby created in the State Treasury so much of the fees collected as may be necessary to defray the actual costs that the department incurs in retrieving, furnishing and maintaining the records and data requested under this subsection. Monies in the special fund may be expended, upon legislative appropriation, to defray such costs. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any income earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. That portion of the fees collected in excess of the amount necessary to defray the actual costs that the department incurs in retrieving, furnishing and maintaining the records and data requested under this subsection shall be deposited in the State General Fund as provided under Section 45-1-23.

(3) The report required by Section 63-3-411 may be used in proving uninsured status of the owner and operator of a vehicle in any action to enforce a claim under the uninsured motorist provisions of an automobile liability policy, but only as provided in Section 13-1-124.

(4) Any person to whom information contained in an accident report is not authorized to be disclosed under this section who fraudulently obtains or fraudulently attempts to obtain a copy of such report or information contained in such report shall be guilty of a misdemeanor and such person, upon conviction, shall be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment.

**SOURCES: Codes, 1942, § 8170; Laws, 1938, ch. 200; Laws, 1981, ch. 361, § 2; Laws, 1985, ch. 303; Laws, 1991, ch. 573, § 116; Laws, 2005, ch. 313, § 1; Laws, 2005, ch. 314, § 1; Laws, 2007, ch. 492, § 1, eff from and after July 1, 2007.**

**Joint Legislative Committee Note —** Section 1 of ch. 313, Laws of 2005, effective from and after July 1, 2005 (approved March 10, 2005), amended this section. Section 1 of ch. 314, Laws of 2005, effective July 1, 2005 (approved March 10, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 314, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2005 amendment (ch. 313) rewrote the former first sentence of (1); and added (3).

The second 2005 amendment (ch. 314) inserted "except as otherwise provided in this section" following "individual so reporting and" near the beginning of the first sentence of (1); inserted (2); and renumbered former (2) as present (3).

The 2007 amendment, in the first sentence of (1), inserted "the spouse or next of kin of any such person, or any person against whom a claim is made as a result of the accident" and deleted "his surviving spouse or one or more of his surviving next of kin" preceding "disclose to such requester"; and added (4).

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

### ATTORNEY GENERAL OPINIONS

Traffic accident reports prepared by law enforcement agencies are subject to the confidentiality requirements of Section 63-3-417 and they are not available to the general public pursuant to the Mississippi Public Records Act. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

A separate investigative report prepared by an officer on a form other than that required by Section 63-3-411 and Section 63-3-415 would be considered a supplemental report as referenced by section 63-3-417, and would be subject to the confidentiality requirements contained therein. Nowak, Jan. 13, 2006, A.G. Op. 05-0626.

## Article 11.

## Restrictions on Speed; Use of Radar.

Sec.



## § 63-3-501. Maximum speed limits on state, interstate and controlled access highways; maximum speed limit on toll roads.

Except as otherwise provided in this section, no person shall operate a vehicle on the highways of the state at a speed greater than sixty-five (65) miles per hour.

The Mississippi Transportation Commission may, in its discretion, by order duly entered on its minutes, increase the speed restrictions on any portion of the Interstate Highway System provided such speed restrictions are

not increased to more than seventy (70) miles per hour. The commission may likewise increase the speed limit to seventy (70) miles per hour on controlled access highways with four (4) or more lanes.

A governmental entity that operates and maintains a toll road as authorized under Section 65-43-1, or that contracts with some person or business to operate and maintain a toll road as authorized under Section 65-43-3, may establish the maximum speed for motor vehicles operated on any such toll road; however, the maximum speed so established may not exceed eighty (80) miles per hour.

**SOURCES: Codes, 1942, § 8176; Laws, 1938, ch. 200; Laws, 1948, ch. 328, § 1; Laws, 1962, ch. 524; Laws, 1966, ch. 571, § 1; Laws, 1970, ch. 442, § 1; Laws, 1976, ch. 318; Laws, 1996, ch 303, § 1; Laws, 2008, 1st Ex Sess, ch. 44, § 3, eff from and after passage (approved June 2, 2008.)**

**Amendment Notes** — The 2008 amendment (ch. 2, 1st Ex Sess) substituted "Except as otherwise provided in this section, no person" for "No person" at the beginning of the first paragraph; and added the third paragraph.

## § 63-3-502. Penalties for conviction of driving motor vehicle or motorcycle on street or highway in a race.

(1) For the purposes of this section:

(a) "Motor vehicle" has the meaning ascribed in Section 27-19-3.

(b) "Motorcycle" has the meaning ascribed in Section 27-19-3.

(c) "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(2) Any person driving a motor vehicle or motorcycle upon a street or highway in a race, upon conviction, shall be punished as follows:

(a) A person convicted for the first offense of violating this subsection shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), imprisoned for not more than forty-eight (48) hours, or both.

(b) For a second conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year, and shall be sentenced to community service work for not less than ten (10) days nor more than one (1) year.

(c)(i) For a third or subsequent conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; however, for any such offense that does not result in serious injury or death to any person, the sentence

of incarceration may be served in the county jail at the discretion of the circuit court judge.

(ii) After a conviction under this subsection and upon receipt of the court abstract, the Commissioner of Public Safety shall suspend the driver's license and driving privileges of the person for not less than five (5) years.

(3) A conviction and imposition of a sentence under this section does not prevent a conviction and imposition of a sentence under Section 63-7-103.

**SOURCES: Laws, 2010, ch. 457, § 2, eff from and after July 1, 2010.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

## § 63-3-505. Conditions under which speed must be decreased.

### JUDICIAL DECISIONS

3. Jury instructions.
4. Jury issues.
6. Miscellaneous.

**3. Jury instructions.**

In a suit brought by a widow against a company, alleging that her decedent was struck and killed by a truck negligently driven by one of the company's employees, the trial court did not err in refusing a peremptory instruction, to the effect that the employee was negligent in failing to decrease his speed as he approached the intersection where the decedent's vehicle was, as, pursuant to Miss. Code Ann. § 63-3-505 (Rev. 2004), the employee, who was already traveling 10 to 25 miles per hour below the speed limit, was not required to reduce his speed further upon approaching the intersection. Martin v. B&B Concrete Co., 71 So. 3d 611 (Miss. Ct. App. 2011), writ of certiorari denied by 71 So. 3d 1207, 2011 Miss. LEXIS 487 (Miss. 2011).

**4. Jury issues.**

In a motorist's suit to recover damages for personal injuries he sustained in a car accident with a construction worker, the construction company and the worker's motions for summary judgment were denied because even though it was undisputed that the motorist did not slow down when he approached the intersection at which the accident occurred, thereby violating Miss. Code Ann. § 63-3-505, whether this was negligence per se was for a jury to decide. Moran v. Callahan, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 94573 (S.D. Miss. Dec. 11, 2007).

**6. Miscellaneous.**

The trial court did not err in finding in favor of a driver in her action against a city and a police officer stemming from a vehicular accident in which the driver was struck by the officer, because the city's argument that the driver was contributorily negligent under Miss. Code Ann. §§ 63-3-805 and 63-3-505 contained no evidentiary basis. The driver's view was blocked by a truck and therefore, she was unable to see the officer approach; the driver had a green light at the intersection and she was not speeding or violating any other rule of the road. City of Jackson v. Presley, 40 So. 3d 578 (Miss. Ct. App. 2009), reversed by 40 So. 3d 520, 2010 Miss. LEXIS 385 (Miss. 2010).

## § 63-3-509. Minimum speed limits.

### ATTORNEY GENERAL OPINIONS

The Mississippi Department of Transportation has the duty to post signs indicating the minimum speed limit on any portion of the Interstate Highway System or on four-laned U.S. designated highways wherein the Mississippi Transportation Commission has established the maximum speed limit to be 70 miles per hour. Brown, Apr. 16, 2004, A.G. Op. 04-0162.

## § 63-3-517. Applicability of speed restrictions to emergency vehicles; duties of drivers of emergency vehicles.

### JUDICIAL DECISIONS

**2. Law enforcement immunity.**

Directed verdict in favor of the sheriff and county in the family's action alleging reckless disregard by an auxiliary deputy sheriff concerning an accident involving the deputy and their son was appropriate under Miss. Code Ann. § 11-46-9(1)(c) because the deputy's actions, at the most, amounted to negligence; the deputy was traveling no more than five miles over the speed limit and Miss. Code Ann. § 63-3-517 permitted him to do so because he was responding to an accident. Peebles v. Winston County, 929 So. 2d 385 (Miss. Ct. App. 2006).

## § 63-3-519. Use of radar speed detection equipment; authorization and limitations.

### ATTORNEY GENERAL OPINIONS

The federal census requirement applies to the provisions of Section 63-3-519(1). Rogers, April 10, 1991, [no A.G. opinion number in the original], 1991 Miss. AG LEXIS 323; opinion withdrawn as to application of federal census requirement in 63-3-519(3) to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

Pursuant to Miss. Code Ann. § 65-7-95, a municipality having a population of 2,000 or more may purchase and operate radar on its public streets. The most authentic proof of population is the census, but the municipality may use another official count. Any speeding conviction resulting from radar evidence would have to be based on both proof of the offense and proof of the town's population. Adams, June 13, 1974, [no A.G. opinion number in original] 1974 Miss. AG LEXIS 8.

The only census that can be used to establish the minimum population necessary for the use of radar is the latest federal census. Shows, April 20, 1994, A.G. Op. # 94-0160, 1994 Miss. AG LEXIS 235; opinion withdrawn as to application of federal census requirement in 63-3-519(3) to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

A radar unit can be located on private property, including church and bank parking lots, as long as the vehicle being timed is located on a public street, and the radar unit can be operated safely and accurately. The private property owner may allow or disallow such use of its property. Russell, Jan. 14, 2005, A.G. Op. 04-0642.

City police department cannot use radar speed detection equipment on a federal within the corporate limits of the city. Fazente, May 13, 2005, A.G. Op. 05-0231.

In order to operate radar, a municipality must have a population of 2,000 ac-

cording to the latest federal census. May, Oct. 7, 2005, A.G. Op. 05-0465, 2005 Miss. AG LEXIS 254; opinion withdrawn as to application of federal census requirement in 63-3-519(3) to municipalities with population of 2,000 or more by Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

The use of all devices for the detection of the speed of automobiles is prohibited under the terms of Section 63-3-519 and this would include VASCAR. Magee, Oct. 21, 2005, A.G. Op. 05-0496.

The legislature clearly intended municipal radar on a highway designated both federal and state to be used only in municipalities of a population of 15,000 or more. Walker, Apr. 28, 2006, A.G. Op. 06-0137.

There is no reason in the law to imply that the census requirement found in 63-3-519(3) applies to 63-3-519(1). A town my use some other official population count to prove its current population. Pennington, February 2, 2007, A.G. Op. #07-00054, 2007 Miss. AG LEXIS 6.

Article 13.

Driving on Right Side of Roadway: Overtaking and Passing; Following.



## § 63-3-601. Vehicles to be driven on right half of roadway; exceptions.

### JUDICIAL DECISIONS

**1. In general.**

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because driving in the left-hand lane of a four-lane highway did not violate Miss. Code Ann. § 63-3-601 or Miss. Code Ann. § 63-3-611. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

Miss. Code Ann. § 63-3-601 should be read in conjunction with Miss. Code Ann. § 63-3-611, which addresses the exceptions to § 63-3-601's requirement that traffic remain on the right side of the roadway. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop for driving in the left-hand lane because Miss. Code Ann. § 63-3-601(4) exempted roadways designated and signposted for one-way traffic. Hence, the traffic stop was not valid. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

## § 63-3-603. Driving on roadways laned for traffic.

### JUDICIAL DECISIONS

**1. In general.**

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because there was no evidence that defendant violated Miss. Code Ann. § 63-3-603 in moving from the right-hand lane to the left-hand lane. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

## § 63-3-611. Overtaking and passing vehicles on left side of roadway.

### JUDICIAL DECISIONS

**2. Applicability.**

Court erred in denying defendant's motion to suppress evidence of steroids found in a search of his vehicle during a traffic stop because driving in the left-hand lane of a four-lane highway did not violate Miss. Code Ann. § 63-3-601 or Miss. Code Ann. § 63-3-611. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

Miss. Code Ann. § 63-3-601 should be read in conjunction with Miss. Code Ann. § 63-3-611, which addresses the exceptions to § 63-3-601's requirement that traffic remain on the right side of the roadway. Couldery v. State, 890 So. 2d 959 (Miss. Ct. App. 2004).

## § 63-3-615. Meeting or overtaking school bus.

(1)(a) The driver of a vehicle upon a street or highway upon meeting or overtaking any school bus that has stopped on the street or highway for the purpose of receiving or discharging any school children shall come to a complete stop at least ten (10) feet from the school bus before reaching the school bus when there is in operation on the school bus the flashing red lights provided in Section 63-7-23, or when a retractable, hand-operated stop sign is extended; the driver shall not proceed until the children have crossed the street or highway and the school bus has resumed motion or the flashing red lights are no longer actuated and the hand-operated stop sign is retracted.

(b) The driver of a vehicle upon a highway that has four (4) lanes or more, whether or not there is a median or turn lane, need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway if the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(2)(a) Except as provided in paragraph (b), any person violating the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon a first conviction thereof shall be fined not less than Three Hundred Fifty Dollars ($350.00) nor more than Seven Hundred Fifty Dollars ($750.00), or imprisoned for not more than one (1) year, or both. For a second or subsequent offense, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Seven Hundred Fifty Dollars ($750.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), or imprisoned for not more than one (1) year, or both. In addition, the Commissioner of Public Safety or his duly authorized designee, after conviction for a second or subsequent offense and upon receipt of the court abstract, shall suspend the driver's license and driving privileges of the person for a period of ninety (90) days.

(b) A conviction under this section for a violation resulting in any injury to a child who is in the process of boarding or exiting a school bus shall be a

violation of Section 97-3-7, and a violator shall be punished under subsection (2) of that section.

(3) This section shall be applicable only in the event the school bus shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than four (4) inches in height.

(4) If the driver of any vehicle is witnessed by a law enforcement officer or the driver of a school bus to have violated this section and the identity of the driver of the vehicle is not otherwise apparent, it shall be a rebuttable inference that the person in whose name the vehicle is registered committed the violation. If charges are filed against multiple owners of a motor vehicle, only one (1) of the owners may be convicted and court costs may be assessed against only one (1) of the owners. If the vehicle that is involved in the violation is registered in the name of a rental or leasing company and the vehicle is rented or leased to another person at the time of the violation, the rental or leasing company may rebut the inference of guilt by providing the law enforcement officer or prosecuting authority with a copy of the rental or lease agreement in effect at the time of the violation.

**SOURCES: Codes, 1942, § 8226; Laws, 1938, ch. 200; Laws, 1946, ch. 341; Laws, 1946, ch. 420, § 10; Laws, 1974, ch. 304; Laws, 1986, ch. 368; Laws, 2011, ch. 481, § 1, eff from and after July 1, 2011.**

**Editor's Note —** Chapter 481, Laws of 2011, which amended this section, is known as "Nathan's Law."

**Amendment Notes —** The 2011 amendment rewrote the section.

## § 63-3-617. Driving in center of highway; refusal to turn to right to allow overtaking vehicle to pass.

### JUDICIAL DECISIONS

**1. No violation of statute.**

State failed to prove the elements of the offense of driving in or near the center of any highway for a distance of more than 200 yards because there was no proof that defendant drove more than 200 yards in or near the center line of any highway in violation of Miss. Code Ann. § 63-3-617; although a highway patrolman testified that defendant's vehicle was behind two other cars and that it was traveling close to the center line, there was no mention or indication that the patrolman observed defendant following too close to the center line of any highway, and there was no evidence to suggest that he observed defendant driving in such a manner as to impede a driver of any truck or vehicle from overtaking and passing him. Fluker v. State, 44 So. 3d 1029 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 2010 Miss. LEXIS 509 (Miss. Sept. 30, 2010), writ of certiorari denied en banc by 49 So. 3d 106, 2010 Miss. LEXIS 522 (Miss. 2010).

ARTICLE 15.

STARTING AND TURNING; SIGNALING.

## § 63-3-701. Starting of stopped, standing, or parked vehicle.

### JUDICIAL DECISIONS

1.-2. [Reserved for future use].
3. Instructions.

**1.-2. [Reserved for future use].**

**3. Instructions.**

Finding in favor of a trucking company and truck driver in a wrongful-death action brought by the decedent's widow was proper because the trial court did not err in refusing the widow's requested jury instructions under Miss. Code Ann. § 63-3-701. There was no evidence to support the instruction that the tractor-trailer could not be operated or moved safely at the time that it left the trucking company's lot. Utz v. Running & Rolling Trucking, Inc., 32 So. 3d 450 (Miss. 2010).

## § 63-3-703. Turning at intersections.

### JUDICIAL DECISIONS

**1. In general.**

Officer had probable cause to stop defendant's vehicle based on his observation of an improper turn and a missing headlight, notwithstanding the fact that the officer had received word from dispatch to be on the lookout for a vehicle matching that description. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

## § 63-3-707. Requirements as to signalling of turns or stops.

### JUDICIAL DECISIONS

**2. Negligence.**

Jury verdict defied all logic, as the evidence presented at trial established that the driver was negligent as a matter of law for failing to maintain a proper lookout and to yield the right-of-way by executing a turn across the insured's lane of travel. A verdict should have been returned in favor of the insured because the violation of said statutory duties by the driver was the unequivocal proximate cause of the insured's injury; even if the driver was not negligent per se, the facts presented at trial unconditionally demonstrated that the collision was the result of her negligence and the trial court committed reversible error in failing to apply Miss. R. Civ. P. 50, and by denying the insured's motion for judgment notwithstanding the verdict. State Farm Auto Ins. Cos. v. Davis, 887 So. 2d 192 (Miss. Ct. App. 2004).

ARTICLE 17.

RIGHT-OF-WAY.

SEC.

lights; duty of driver of authorized emergency, recovery or utility service vehicle.

## § 63-3-801. Vehicle approaching intersection; vehicles entering intersection at same time.

### JUDICIAL DECISIONS

**3. Instructions.**

Finding in favor of a trucking company and truck driver in a wrongful-death action brought by the decedent's widow was proper because the trial court did not err in refusing the widow's requested jury instructions under Miss. Code Ann. § 63-3-801 since the record contained no evidence to show that the truck driver or decedent were in close proximity to each other at an intersection when the truck driver entered the highway. The accident occurred two and one-half miles after the truck driver had entered the highway from the trucking company's lot and had been traveling in the right-hand lane. Utz v. Running & Rolling Trucking, Inc., 32 So. 3d 450 (Miss. 2010).

## § 63-3-803. Vehicle turning left at intersection.

### JUDICIAL DECISIONS

**2. Negligence.**

Jury verdict defied all logic, as the evidence presented at trial established that the driver was negligent as a matter of law for failing to maintain a proper lookout and to yield the right-of-way by executing a turn across the insured's lane of travel. A verdict should have been returned in favor of the insured because the violation of said statutory duties by the driver was the unequivocal proximate cause of the insured's injury; even if the driver was not negligent per se, the facts presented at trial unconditionally demonstrated that the collision was the result of her negligence and the trial court committed reversible error in failing to apply Miss. R. Civ. P. 50, and by denying the insured's motion for judgment notwithstanding the verdict. State Farm Auto Ins. Cos. v. Davis, 887 So. 2d 192 (Miss. Ct. App. 2004).

## § 63-3-805. Vehicle entering through highway.

### JUDICIAL DECISIONS

1. In general.
5. Negligence — In general.
6. —Contributory negligence.
10. Negligence not found.

**1. In general.**

Record showed substantial evidence that a jury could reasonably base their verdict on in favor of the truck driver in a car accident; the jury found that the car driver had time to react at the intersection. Phan v. Denley, 915 So. 2d 504 (Miss. Ct. App. 2005).

**5. Negligence — In general.**

Expert witness testified that a driver was at fault for pulling out in front of a truck, and the driver's negligence was the sole proximate cause of the accident; substantial evidence supported the verdict that the driver was negligent for disregarding an immediate hazard. Etheridge v. Harold Case & Co., 960 So. 2d 474 (Miss. Ct. App. 2006), writ of certiorari denied by 959 So. 2d 1051, 2007 Miss. LEXIS 383 (Miss. 2007).

**6. —Contributory negligence.**

There was sufficient evidence to find that a driver was contributorily negligent including driver's duty of common sense under Miss. Code Ann. § 63-3-805, the fact that a good portion of the bus was past the center line before colliding with the car, and the disputed testimony with regard to the amount of time between when the bus pulled into the road and when the bus arrived at the point of collision. Callahan v. Ledbetter, 992 So. 2d 1220 (Miss. Ct. App. 2008).

Court's finding of contributory negligence on the part of plaintiff was proper where defendant bus driver testified that he came to a complete stop at the stop sign, he looked both ways for oncoming traffic before entering the intersection, both parties had a clear unobstructed view of the intersection as they approached from their respective directions, and defendant's bus was hit by plaintiff's truck, thus indicating a lack of evasive action on the part of plaintiff. Thompson ex rel. Thompson v. Lee County Sch. Dist., 925 So. 2d 57 (Miss. 2006).

**10. Negligence not found.**

The trial court did not err in finding in favor of a driver in her action against a city and a police officer stemming from a vehicular accident in which the driver was struck by the officer, because he city's argument that the driver was contributorily negligent under Miss. Code Ann. §§ 63-3-805 and 63-3-505 contained no evidentiary basis. The driver's view was blocked by a truck and therefore, she was unable to see the officer approach; the driver had a green light at the intersection and she was not speeding or violating any other rule of the road. City of Jackson v. Presley, 40 So. 3d 578 (Miss. Ct. App. 2009), reversed by 40 So. 3d 520, 2010 Miss. LEXIS 385 (Miss. 2010).

## § 63-3-809. Procedure upon approach of authorized emergency vehicles; procedure upon approaching certain stationary vehicles using authorized flashing lights; duty of driver of authorized emergency, recovery or utility service vehicle.

(1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a law enforcement officer.

(2) Upon approaching a stationary authorized emergency vehicle, when such vehicle is giving a signal by use of flashing, blinking, oscillating or rotating lights, as authorized under Section 63-7-19, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(3) Upon approaching a stationary recovery vehicle, a utility service vehicle or a highway maintenance vehicle, when such vehicle is giving a signal by use of authorized flashing lights, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to the stationary recovery vehicle, the utility service vehicle or the highway maintenance vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(4) For purposes of this section, unless the context otherwise clearly requires:

(a) "Highway maintenance vehicle" means a vehicle used for the maintenance of highways and roadways in this state and is:

(i) Owned or operated by the Department of Transportation, a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with the Department of Transportation, a county, a municipality or other political subdivision of this state;

(b) "Recovery vehicle" means a truck that is specifically designed for towing a disabled vehicle or a combination of vehicles.

(c) "Utility service vehicle" means a vehicle used by any person, municipality, county, electric cooperative, corporation, board, commission, district or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telecommunications services or any combination thereof, for sale to consumers in any particular service area, or by any contractor under contract with any such entity.

(5) A violation of this section is a misdemeanor punishable by a fine:

(a) Of not more than Two Hundred Fifty Dollars ($250.00); or

(b) Of not more than One Thousand Dollars ($1,000.00) if violation of this section results in:

(i) Property damage to the emergency vehicle, highway maintenance vehicle, utility service vehicle or recovery vehicle; or

(ii) Bodily injury to the driver or a passenger of any such vehicle.

(6) This section shall not operate to relieve the driver of an authorized emergency vehicle, a recovery vehicle, a utility service vehicle or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

**SOURCES: Codes, 1942, § 8199; Laws, 1938, ch. 200; Laws, 2007, ch. 315, § 1; Laws, 2012, ch. 412, § 1, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the subsection designations. Laws of 2007, ch. 315, § 1, inserted new subsections (2) through (5) but failed to renumber the original subsection (2) as present subsection (6). The Joint Committee ratified the correction, renumbering former (2) as present (6), at its June 26, 2007, meeting.

**Amendment Notes —** The 2007 amendment substituted "roadway" for "highway" throughout; substituted "law enforcement officer" for "police officer" at the end of (1); added (2) through (5); redesignated former (2) as present (6); and inserted "a recovery vehicle or a highway maintenance vehicle" in (6).

The 2012 amendment added (3)(c); and added "a utility service vehicle" and/or "the utitlity service vehicle" following "stationery recovery vehicle" throughout the section.

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for misdemeanors and felonies, see § 99-19-73.

### JUDICIAL DECISIONS

1. In general.
2. Illustrative Cases.

**1. In general.**

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. Davis v. Latch, 873 So. 2d 1059 (Miss. Ct. App. 2004).

**2. Illustrative Cases.**

Deputy, who stopped at an intersection and, with his blue lights and sirens activated, slowly proceeded across in a stop-and-start fashion, exercised sufficient safety measures to prompt other drivers near the intersection to yield the right-of-way, including the driver traveling in the lane ahead of plaintiffs. Thus, viewing the evidence in the light most favorable to plaintiffs, the deputy's conduct did not demonstrate a conscious indifference to consequences, nor did it rise to the level of reckless disregard for the safety and well-being of persons not engaged in criminal activity, so as subject the county to liability under Miss. Code Ann. § 11-46-9(1)(c). Rayner v. Pennington, 25 So. 3d 305 (Miss. 2010).

## ARTICLE 19.

## STOPPING, STANDING AND PARKING.

SEC.

63-3-915. Who may authorize towing of vehicle located on private property.

## § 63-3-901. Stopping, standing or parking prohibited in specified places.

### ATTORNEY GENERAL OPINIONS

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobi-

lize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

## § 63-3-903. Stopping, standing or parking upon highway outside of business or residence districts.

### JUDICIAL DECISIONS

**8. Standing or stopped vehicle.**

Although a county was not liable for an individual's injuries after a third party hit the individual and forced her into a county garbage truck because weather conditions were determined to be the sole cause of the accident, the county also would have been immune under Miss. Code Ann. § 63-3-903, as there was no evidence that any negligence was attributed to the driver of the garbage truck. Hayes v. Greene County, 932 So. 2d 831 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 521 (Miss. 2006).

## § 63-3-915. Who may authorize towing of vehicle located on private property.

A motor vehicle that is located upon private property may not be towed except when authorized by the owner of the motor vehicle, the lienholder of the motor vehicle, the owner of the property upon which the motor vehicle is located or the towing is authorized by other local, state or federal law.

**SOURCES: Laws, 2011, ch. 451, § 1, eff from and after July 1, 2011.**

Article 21.

Required Stops.

Sec.

63-3-1011. Stops at railroad grade crossings by vehicles carrying passengers for hire or explosive substances and school buses.

## § 63-3-1003. Designation of yield right-of-way entrances; conduct of driver at yield-right-of-way intersection; proof of failure to yield right-of-way.

### JUDICIAL DECISIONS

**1. Negligence per se.**

Just as one seeking relief for any other cause of action needs not refer to the case establishing the particular tort at the center of his case, Fed. R. Civ. P. 8 does not demand that a plaintiff claiming negligence per se include within his complaint an explicit citation to authority simply for the sake of doing so; so long as the complaint alleges particular conduct that clearly violates a statute or regulation, it pleads negligence per se with sufficient particularity. Therefore, summary judgment was denied in a negligence per se case where there was no citation to Miss. Code Ann. § 63-3-1003 since a complaint was sufficient where it alleged that a truck driver failed to adhere to the proper

standard of care when he did not yield the right of way. Welch v. Loftus, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 17963 (S.D. Miss. Feb. 23, 2011).

## § 63-3-1009. Stops at designated particularly dangerous railroad grade crossings.

### JUDICIAL DECISIONS

**3. Negligence.**

Federal district court did not err in rejecting an injured contract worker's contention that a railroad was negligent per se for failing to install a flagman near a crossing 20-30 feet from where the worker was removing obstructions from the right-of-way; although the worker's truck was hit by a train while crossing the tracks, the evidence showed that the location of the work zone did not force the worker to "foul the tracks" while maneuvering his truck and that he had violated three separate laws when he crossed the tracks: not stopping after hearing the locomotive's whistle in violation of Miss. Code Ann. § 77-9-249(1), failing to stop at a crossbuck in violation of Miss. Code Ann. § 77-9-249(4), and failing to stop at a stop sign in violation of Miss. Code Ann. § 63-3-1009, any of which could have been the proximate cause of the accident. Baker v. Canadian National/Illinois Cent. R.R., 536 F.3d 357 (5th Cir. 2008), writ of certiorari denied by 555 U.S. 1171, 129 S. Ct. 1317, 173 L. Ed. 2d 585, 2009 U.S. LEXIS 1320, 77 U.S.L.W. 3467 (2009).

## § 63-3-1011. Stops at railroad grade crossings by vehicles carrying passengers for hire or explosive substances and school buses.

(1) The driver of any motor vehicle carrying passengers for hire or of any vehicle carrying explosive substances of flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for:

(a) Any approaching train or any other vehicle operated upon the rails for the purpose of maintenance of railroads, including, but not limited to, all hi-rail vehicles and on-track maintenance machines; and

(b) Signals indicating the approach of a train or any other vehicle or machine operated upon the rails. The driver shall not proceed until he can do so safely.

(2) No stop need be made at any crossing where a police officer or a traffic control signal directs traffic to proceed.

(3) The driver of every school transportation vehicle used to transport pupils, upon approaching any railroad crossing, shall comply with the provisions of Section 37-41-55.

**SOURCES: Codes, 1942, § 8211; Laws, 1938, ch. 200; Laws, 2004, ch. 448, § 5; Laws, 2011, ch. 327, § 1, eff from and after July 1, 2011.**

**Amendment Notes —** The 2011 amendment rewrote the section.

Article 25.

Reckless or Careless Driving and Miscellaneous Rules.

Sec.
63-3-1215. Drag racing on public roads prohibited; penalties.

## § 63-3-1201. Reckless driving.

**Cross References —** Imposition of standard state assessmen in addition to all court imposed fines or other penalties for speeding, reckless and careless driving violations, see § 99-19-73.

### JUDICIAL DECISIONS

2. What constitutes reckless driving, in general.
5. Miscellaneous.

**2. What constitutes reckless driving, in general.**

Conviction for reckless driving did not require that defendant pose a danger to another person, but to himself and his property; therefore, there was sufficient evidence to sustain the conviction due to the fact that defendant posed a danger to himself and an officer where he was proceeding at a high rate of speed on the wrong side of the road. Ouzts v. State, 947 So. 2d 1005 (Miss. Ct. App. 2006).

**5. Miscellaneous.**

Defendant was entitled to a jury instruction on the lesser non-included offense of reckless driving at his trial for aggravated assault, Miss. Code Ann. § 97-3-7 (Rev. 2006), where he requested the charge because a conviction for aggravated assault required proof of intent, the crimes had different elements, and there was conflicting evidence as to whether defendant intended to injure police officers when he failed to stop and engaged them in a multiple-vehicle chase. Brooks v. State, 18 So. 3d 833 (Miss. 2009).

Trial court properly granted summary judgment to a county constable under Miss. R. Civ. P. 56 in a personal injury suit because the constable had immunity, under Miss. Code Ann. § 11-46-9(1)(c), for injuries to a father, which occurred when the constable's car collided with his four-wheeler, because there was significant evidence that the father was engaged in criminal activity that had a causal nexus to the accident; the father was driving on a suspended license and pled guilty to reckless driving, however summary judgment against the father's sons was improper because genuine issues of fact existed as to whether the sons were engaged in criminal activity, whether any criminal activity on the part of the sons had a "causal nexus" to the accident, and whether the constable acted with reckless disregard in his pursuit of appellants. Giles v. Brown, 962 So. 2d 612 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 962 So. 2d 38, 2007 Miss. LEXIS 477 (Miss. 2007).

## § 63-3-1213. Careless driving.

**Cross References —** Imposition of standard state assessmen in addition to all court imposed fines or other penalties for speeding, reckless and careless driving violations, see § 99-19-73.

JUDICIAL DECISIONS

3. Probable cause.
4. Preservation for review.

**3. Probable cause.**

Defendants' convictions for possession of more than five kilograms of marijuana were appropriate because, under Miss. Code Ann. § 63-3-1213, defendants' vehicle was seen driving in a careless or imprudent manner and the deputy had the authority to stop them. When defendants acted nervous, the deputy's retrieval of a drug-detecting dog was appropriate and the drug-detecting dog's positive alerts created probable cause for the deputy to search the trunk of the rental car. Shelton v. State, 45 So. 3d 1203 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 548 (Miss. 2010), writ of certiorari denied by 2010 Miss. LEXIS 553 (Miss. Oct. 21, 2010).

Court could not say that it was clear that a police officer's observation of a driver driving in the middle of two lanes did not or could not constitute a violation of Miss. Code Ann. § 63-3-1213, nor could it say that there was no objective basis for the stop of the driver's vehicle; thus the case was not one in which the officer acted without any objective reason or on the basis of a purely subjective feeling or "hunch." On the contrary, the officer did have an objective, reasonable suspicion that the driver had committed the traffic violation of careless driving, even though he was ultimately acquitted of the careless driving charge. Adams v. City of Booneville, 910 So. 2d 720 (Miss. Ct. App. 2005).

There was probable cause for the stop of a driver's vehicle because the time of night was very late (2:30 a.m.), the particular night, New Year's Eve, was one on which persons were widely known to celebrate and often consume alcohol, and in the officer's observation, the vehicle was traveling without due regard for the width and use of the highway by traveling in the middle of two lanes of traffic, and the reserve officer accompanying the officer saw the vehicle swerve. All of these circumstances served to bolster the conclusion that the driver appeared to the officer to be driving in violation of the careless driving statute, Miss. Code Ann. § 63-3-1213. Adams v. City of Booneville, 910 So. 2d 720 (Miss. Ct. App. 2005).

Trial court properly denied defendant's motion to suppress cocaine found during a strip search conducted after defendant's arrest for driving under the influence. There was probable cause for the traffic stop where a police officer witnessed the vehicle defendant was driving approach the curb twice; the presence or absence of traffic is not controlling to a determination of carelessness. Henderson v. State, 878 So. 2d 246 (Miss. Ct. App. 2004).

**4. Preservation for review.**

Defendant's convictions for driving under the influence of an intoxicating liquor, careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840 (Miss. Ct. App. 2007).

## § 63-3-1215. Drag racing on public roads prohibited; penalties.

(1) No person shall drive any vehicle upon the public roads in this state in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, speed competition, drag race, test or physical endurance, exhibition, or purpose of making a speed record.

(2) For the purposes of this section "drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a

competitive attempt to out distance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit on the public roads of this state.

(3) For the purposes of this section "racing" means the use of one or more vehicles in an attempt to out gain, out distance, or prevent another vehicle from passing, or to test the physical stamina or endurance of drivers over long distance driving routes on the public roads of this state.

(4) Any person convicted of violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than six (6) months, or both.

(5) The prohibitions contained in this section do not apply to events sanctioned by local governing authorities.

**SOURCES: Laws, 2006, ch. 408, § 1, eff from and after July 1, 2006.**

## Article 27.

## John Paul Frerer Bicycle Safety Act.

Sec.



### § 63-3-1301. Short title.

This article shall be known and may cited as the "John Paul Frerer Bicycle Safety Act."

**SOURCES: Laws, 2010, ch. 414, § 1, eff from and after July 1, 2010.**

### § 63-3-1303. Applicability.

(1) This article applies to bicycles whenever they are operated upon any roadway or highway, or upon any path set aside for the exclusive use of bicycles.

(2) A person riding a bicycle upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle, except as may be otherwise provided in this article.

**SOURCES: Laws, 2010, ch. 414, § 2, eff from and after July 1, 2010.**

## § 63-3-1305. "Bicycle lane" defined; motor vehicle operator to avoid blocking lane and to yield to bicyclist in lane.

(1) For purposes of this section, "bicycle lane" means a portion of the roadway or a lane separated from the roadway that has been designated by striping, pavement markings and signage for the preferential or exclusive use of bicyclists.

(2) Whenever a bicycle lane has been provided adjacent to a roadway, the operator of a motor vehicle may not block the bicycle lane to oncoming bicycle traffic and shall yield to a bicyclist in the bicycle lane before entering or crossing the lane.

(3) This section does not apply to vehicles engaged in providing public services, including, but not limited to, fire engines, police vehicles, ambulances, public utility vehicles, waste management trucks and tow trucks.

**SOURCES: Laws of 2010, ch. 414, § 3, effective from and after July 1, 2010.**

## § 63-3-1307. Rights and duties of bicyclist operating bicycle upon roadway.

(1) Every bicyclist operating a bicycle upon a roadway less than the normal speed of traffic shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following conditions:

(a) When it is unsafe to do so;

(b) When overtaking and passing another bicycle or vehicle proceeding in the same direction;

(c) When preparing for or making a left turn at an intersection or into a private road or driveway;

(d) When proceeding straight in a place where right turns are permitted; and

(e) When necessary to avoid hazardous conditions, including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards or a lane of substandard width that makes it unsafe to continue along the right portion of the way. For purposes of this paragraph, "lane of substandard width" means a lane that is too narrow for a bicycle and a vehicle to travel safely side by side in the lane.

(2) When operating a bicycle upon a roadway, a bicyclist must exercise due care when passing or overtaking a vehicle that is standing or proceeding in the same direction.

(3) Bicyclists riding bicycles upon a roadway shall not ride more than two (2) abreast, except on paths or parts of roadways set aside for exclusive use of bicycles.

**SOURCES: Laws, 2010, ch. 414, § 4, eff from and after July 1, 2010.**

## § 63-3-1309. Rights and duties of operator of motor vehicle with respect to bicycles.

(1) While passing a bicyclist on a roadway, a motorist shall leave a safe distance of not less than three (3) feet between his vehicle and the bicyclist and shall maintain such clearance until safely past the bicycle.

(2) A motor vehicle operator may pass a bicycle traveling in the same direction in a nonpassing zone with the duty to execute the pass only when it is safe to do so.

(3) The operator of a vehicle that passes a bicyclist proceeding in the same direction may not make a right turn at any intersection or into any highway or driveway unless the turn can be made with reasonable safety.

**SOURCES: Laws, 2010, ch. 414, § 5, eff from and after July 1, 2010.**

## § 63-3-1311. Signaling of turns by bicyclist.

(1) A bicyclist shall indicate a right turn by extending the left arm upward, by raising the left arm to the square, or by extending the right arm horizontally to the right.

(2) A bicyclist shall indicate a left turn by extending the left arm horizontally.

(3) A bicyclist shall indicate stopping or decreasing speed by extending the left arm or the right arm downward.

(4) A bicyclist is not required to give the signals continuously, if the hand or arm is needed to control the bicycle.

**SOURCES: Laws, 2010, ch. 414, § 6, eff from and after July 1, 2010.**

## § 63-3-1313. Prohibition against harassing, taunting or maliciously throwing object at or near bicyclist; penalties.

It is unlawful to harass, taunt or maliciously throw an object at or in the direction of any person riding a bicycle.

A person convicted of a violation of this section shall be fined One Hundred Dollars ($100.00) for the first offense, Five Hundred Dollars ($500.00) for the second offense, and a fine of Two Thousand Five Hundred Dollars ($2,500.00) and imprisonment in the county jail for seven (7) days for the third and subsequent offenses.

**SOURCES: Laws, 2010, ch. 414, § 7, eff from and after July 1, 2010.**

**Cross References —** Imposition of standard state fee in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

# CHAPTER 5

## Size, Weight and Load



## § 63-5-1. Short title.

### RESEARCH REFERENCES

**ALR.** Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

## § 63-5-17. Height of vehicles.

### JUDICIAL DECISIONS

**2. Applicability.**

In a case in which it was undisputed that the height of the load hauled by a trucking company exceeded twelve feet, six inches, in violation of Miss. Code Ann. § 63-5-17, the trucking company was not strictly liable for the damage to a car when the load snagged a telephone wire and caused a telephone company's pole to fall and damage the car. The statute's imposition of strict liability did not apply to claims for damage to "structures" other than the overhead structure or structure supporting the overhead wire, thus the statute was inapplicable to the claims for recovery for damage to the car or for personal injuries." Moncrief v. Bennett Truck Transp., LLC, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 46915 (S.D. Miss. June 4, 2009).

## § 63-5-19. Vehicle length limitations; generally.

### ATTORNEY GENERAL OPINIONS

The towing of more than two trailers is prohibited by Section 63-5-19(4), however, it is legal to pull two trailers simultaneously; with regard to the maximum length of the towing vehicle and the trailers, subsection (1) limits a vehicle to a length of no more than forty (40) feet while subsection (3) limits trailers drawn in a double trailer combination to a length of thirty (30) feet each. Joseph, May 9, 2003, A.G. Op. 03-0205.

## § 63-5-27. Wheel and axle loads.

### ATTORNEY GENERAL OPINIONS

A municipality has authority to set weight limits of vehicles passing over municipal streets, and any driver operating a vehicle in contravention of any weight limit shall be liable for all damage which the highway or street may sustain as a result of that operation; further, municipal governing authorities may seek damages in a civil action. Richardson, May 16, 2003, A.G. Op. 03-0229.

## § 63-5-33. Gross weight of vehicle and loads; Table III.

(1) Subject to the limitations imposed on wheel and axle loads by Section 63-5-27, and to the further limitations hereinafter specified, the total combined weight (vehicles plus load) on any group of axles of a vehicle or a combination of vehicles shall not exceed the value given in the following table (Table III) corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, on those highways or parts of highways designated by the Mississippi Transportation Commission as being capable of carrying the maximum load limits and, in addition thereto, such other highways or parts of highways found by the commission to be suitable to carry the maximum load limits from an engineering standpoint, and so designated as such by order of the commission entered upon its minutes and published once each week for three (3) consecutive weeks in a daily newspaper published in this state and having a general circulation therein. The maximum total combined weight carried on any group of two (2) or more consecutive axles shall be determined by the formula contained in the Federal Weight Law enacted January 4, 1975, as follows: W = 500 (LN/N-1+12N+36) where W = maximum weight in pounds carried on any group of two (2) or more axles computed to the nearest five hundred (500) pounds, L = distance in feet between the extremes of any group of two (2) or more consecutive axles, and N = number of axles in any group under consideration.

TABLE III

| DISTANCE IN FEET BETWEEN THE EXTREMES OF ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES | MAXIMUM LOAD IN POUNDS CARRIED ON ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES | | | | | |
|---|---|---|---|---|---|---|
| | 2 axles | 3 axles | 4 axles | 5 axles | 6 axles | 7 axles |
| 4 | 34,000 | | | | | |
| 5 | 34,000 | | | | | |
| 6 | 34,000 | | Axle groups in | | | |
| 7 | 34,000 | | | | | |
| 8 and less | 34,000 | 34,000 | these spacings | | | |
| More than | | | | | | |
| 8 | 38,000 | 42,000 | | | | |
| 9 | 39,000 | 42,500 | | | | |
| 10 | 40,000 | 43,500 | impractical | | | |
| 11 | | 44,000 | | | | |
| 12 | | 45,000 | 50,000 | | | |
| 13 | | 45,500 | 50,500 | | | |
| 14 | | 46,500 | 51,500 | | | |
| 15 | | 47,000 | 52,000 | | | |
| 16 | | 48,000 | 52,500 | 58,000 | | |
| 17 | | 48,500 | 53,500 | 58,500 | | |

| DISTANCE IN FEET BETWEEN THE EXTREMES OF ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES | MAXIMUM LOAD IN POUNDS CARRIED ON ANY GROUP OF 2 OR MORE CONSECUTIVE AXLES | | | | |
|---|---|---|---|---|---|
| 2 axles | 3 axles | 4 axles | 5 axles | 6 axles | 7 axles |
| 18 | 49,500 | 54,000 | 59,000 | | |
| 19 | 50,000 | 54,500 | 60,000 | | |
| 20 | 51,000 | 55,500 | 60,500 | 66,000 | |
| 21 | 51,500 | 56,000 | 61,000 | 66,500 | |
| 22 | 52,500 | 56,500 | 61,500 | 67,000 | |
| 23 | 53,000 | 57,500 | 62,500 | 68,000 | |
| 24 | 54,000 | 58,000 | 63,000 | 68,500 | 74,000 |
| 25 | 54,500 | 58,500 | 63,500 | 69,000 | 74,500 |
| 26 | 55,500 | 59,500 | 64,000 | 69,500 | 75,000 |
| 27 | 56,000 | 60,000 | 65,000 | 70,000 | 75,500 |
| 28 | 57,000 | 60,500 | 65,500 | 71,000 | 76,500 |
| 29 | 57,500 | 61,500 | 66,000 | 71,500 | 77,000 |
| 30 | 58,500 | 62,000 | 66,500 | 72,000 | 77,500 |
| 31 | 59,000 | 62,500 | 67,500 | 72,500 | 78,000 |
| 32 | 60,000 | 63,500 | 68,000 | 73,000 | 78,500 |
| 33 | | 64,000 | 68,500 | 74,000 | 79,000 |
| 34 | | 64,500 | 69,000 | 74,500 | 80,000 |
| 35 | | 65,500 | 70,000 | 75,000 | 80,000 |
| 36 | | 66,000 | 70,500 | 75,500 | 80,000 |
| 37 | | 66,500 | 71,000 | 76,000 | 80,000 |
| 38 | | 67,500 | 71,500 | 77,000 | 80,000 |
| 39 | | 68,000 | 72,500 | 77,500 | 80,000 |
| 40 | | 68,500 | 73,000 | 78,000 | 80,000 |
| 41 | | 69,500 | 73,500 | 78,500 | 80,000 |
| 42 | | 70,000 | 74,000 | 79,000 | 80,000 |
| 43 | | 70,500 | 75,000 | 80,000 | 80,000 |
| 44 | | 71,500 | 75,500 | 80,000 | 80,000 |
| 45 | | 72,000 | 76,000 | 80,000 | 80,000 |
| 46 | | 72,500 | 76,500 | 80,000 | 80,000 |
| 47 | | 73,500 | 77,500 | 80,000 | 80,000 |
| 48 | | 74,000 | 78,000 | 80,000 | 80,000 |
| 49 | | 74,500 | 78,500 | 80,000 | 80,000 |
| 50 | | 75,500 | 79,000 | 80,000 | 80,000 |
| 51 | | 76,000 | 80,000 | 80,000 | 80,000 |
| 52 | | 76,500 | 80,000 | 80,000 | 80,000 |
| 53 | | 77,500 | 80,000 | 80,000 | 80,000 |
| 54 | | 78,000 | 80,000 | 80,000 | 80,000 |
| 55 | | 78,500 | 80,000 | 80,000 | 80,000 |
| 56 | | 79,500 | 80,000 | 80,000 | 80,000 |
| 57 | | 80,000 | 80,000 | 80,000 | 80,000 |

(2) Moreover, in addition to the per axle weight limitations specified by Section 63-5-27, two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing that the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more, except that, until September 1, 1989, the

axle distance for tank trailers, dump trailers and ocean transport container haulers may be thirty (30) feet or more. Such overall gross weight may not exceed eighty thousand (80,000) pounds, except as provided by this section.

(3) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling products in the manner set forth in this subsection, whether or not such vehicles are operating with a harvest permit, shall be allowed a gross weight of not to exceed forty thousand (40,000) pounds on any tandem. Vehicles operating without a harvest permit shall be allowed a tolerance not to exceed five percent (5%) above their authorized gross vehicle weight, tandem or axle weight; except that the maximum gross vehicle weight of any such vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%). Vehicles operating with a harvest permit shall be allowed a tolerance not to exceed five percent (5%) above their authorized tandem or axle weight, but the maximum gross vehicle weight of any such vehicle shall not exceed eighty-four thousand (84,000) pounds. However, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27. The tolerance allowed by this subsection shall only apply to the operation of vehicles from the point of loading to the point of unloading for processing, and to the operation of vehicles hauling sand, gravel, wood chips, wood shavings, sawdust, fill dirt and agricultural products, and products for recycling or materials for the construction or repair of highways. The range of such operation shall not exceed a radius of one hundred (100) miles except where the products are being transported for processing within this state. The tolerance shall not be allowed for vehicles loading at a point of origin having scales available for weighing each individual axle of the vehicle; provided, however, that vehicles loading at a point of origin having scales available for weighing the vehicle shall not be eligible for any tolerance over the gross weight limit of eighty thousand (80,000) pounds.

(4) Notwithstanding the provisions of Section 63-5-27 and/or Section 63-5-29 to the contrary, vehicles hauling prepackaged products, unloaded at a state port or to be loaded at a state port, which are containerized in such a manner as to make subdivision thereof impractical shall be allowed a gross weight of not to exceed forty thousand (40,000) pounds on any tandem, and a tolerance not to exceed five percent (5%) above their authorized gross weight, tandem or axle weight; except that the maximum weight of any vehicle shall not exceed eighty thousand (80,000) pounds plus a tolerance thereon of not more than two percent (2%); however, neither the increased weights in this subsection nor any tolerance shall be allowed on federal interstate highways or on other highways where a tolerance is specifically prohibited by the Transportation Commission, the county board of supervisors or the municipal governing authorities as provided for in Section 63-5-27.

(5)(a) Vehicles for which a harvest permit has been issued pursuant to Section 27-19-81(4) shall be allowed a gross vehicle weight not to exceed

eighty-four thousand (84,000) pounds. However, the board of supervisors of any county and the governing authorities of any municipality may designate the roads, streets and highways under their respective jurisdiction on and along which vehicles for which a harvest permit has been issued may travel. This subsection shall not apply to the federal interstate system.

(b) Any owner or operator who has been issued a harvest permit and who wishes to operate a vehicle on the roads, streets or highways under the jurisdiction of a county or municipality at a gross vehicle weight greater than the weight allowed by law or greater than the maximum weight established for such roads, streets or highways by the board of supervisors or municipal governing authorities, shall notify, in writing, the board of supervisors or the governing authorities, as the case may be, before operating such vehicle on the roads, streets or highways of such county or municipality. In his notice, the permit holder shall identify the routes over which he intends to operate vehicles for which the permit has been issued and the dates or time period during which he will be operating such vehicles. The board of supervisors or the governing authorities, as the case may be, shall have two (2) working days to respond in writing to the permit holder to notify the permit holder of the routes on and along which the permit holder may operate vehicles for which a harvest permit has been issued. Failure of the board of supervisors or the governing authorities timely to notify the permit holder and to designate the routes on and along which the permit holder may operate shall be considered as authorizing the permit holder to operate on any of the roads, streets or highways of the county or municipality in accordance with the authority granted to the permit holder by the harvest permit.

(c) Anytime a timber deed is filed with the chancery clerk, the grantee, at that time, may make a written request of the board of supervisors of the county or the governing authorities of the municipality, as the case may be, for the purpose of providing to the grantee, within three (3) working days of the filing of the request, a designated and approved route over the roads, streets or highways under the jurisdiction of the county or city, as the case may be, that the grantee may travel for the purpose of transporting harvested timber. Upon providing such route designation, the county or city, as the case may be, shall also provide to the grantee a map designating the approved route. An approved route designation provided to a grantee under the provisions of this paragraph shall be valid for a period of six (6) months from its date of issue. The permit authorized to be issued under paragraph (b) of this subsection shall not be required for any person who obtains a permit issued under this paragraph.

(d) This subsection (5) shall stand repealed from and after July 1, 2013.

(6) Nothing in this section or subsections (1) through (4) of Section 63-5-27 shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the interstate highway system of this state on January 4, 1975.

**SOURCES: Codes, 1942, § 8271; Laws, 1938, ch. 200; Laws, 1946, ch. 307, § 4; Laws, 1948, ch. 328, § 6; Laws, 1954, ch. 335; Laws, 1958, ch. 501; Laws, 1960, ch. 409; Laws, 1963, 1st Ex Sess ch. 22; Laws, 1964, ch. 458, §§ 1, 2; Laws, 1964, 1st Ex Sess ch. 33; Laws, 1981, ch. 366, § 6; Laws, 1981, ch. 532, § 1; Laws, 1982, ch. 479, § 2; Laws, 1984, ch. 364; Laws, 1989, ch. 385, § 1; Laws, 1993, ch. 478, § 2; Laws, 1994, ch. 501, § 3; Laws, 1996, ch. 408, § 2; Laws, 1997, ch. 548, § 2; Laws, 1998, ch. 592, § 2; Laws, 2000, ch. 589, § 2; Laws, 2002, ch. 386, § 2; Laws, 2009, ch. 554, § 2, eff from and after July 1, 2009.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (5)(c) by substituting "paragraph (b) of this subsection" for "paragraph (b) of this section." The Joint Legislative Committee ratified the correction at its July 22, 2010 meeting.

**Amendment Notes —** The 2005 amendment reenacted and amended the section by extending the date of the repealer for (5), located in (5)(d), from "July 1, 2005" until "July 1, 2009"; and making minor stylistic changes.

The 2009 amendment substituted "July 1, 2013" for "July 1, 2009" at the end of (5)(d).

## § 63-5-34. Gross weight of vehicle and loads; exceptions.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-5-39. Inspection of certain vehicles upon registration; special permit; operation of vehicle or combination of vehicles in excess of gross weight limits.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-5-43. Enforcement of Sections 63-5-29 through 63-5-41.

### ATTORNEY GENERAL OPINIONS

For the purposes of Section 45-2-1, weight enforcement officers employed by the Mississippi Department of Transportation are "law enforcement officers" and their beneficiaries would be eligible to receive the death benefits provided for by that statute. Brown, Jan. 17, 2003, A.G. Op. #03-0009.

## § 63-5-49. Inspection and weighing of vehicles; assessment of penalty against owner or operator of overweight vehicle; removal of load in excess of legal limit; failure to stop and submit vehicle to inspection or weighing.

### ATTORNEY GENERAL OPINIONS

For the purposes of Section 45-2-1, weight enforcement officers employed by the Mississippi Department of Transportation are "law enforcement officers" and their beneficiaries would be eligible to receive the death benefits provided for by that statute. Brown, Jan. 17, 2003, A.G. Op. #03-0009.

### RESEARCH REFERENCES

**ALR.** Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

## § 63-5-52. Special permits for vehicles transporting heavy equipment with nondivisible loads having gross vehicle weight of 150,000 pounds or less.

In addition to other permits authorized to be issued for overweight loads, the Department of Transportation is authorized to issue annual special permits for vehicles transporting heavy equipment with a nondivisible load having a gross vehicle weight of one hundred fifty thousand (150,000) pounds or less. The permit shall be issued for the pulling unit. The department may establish rules and regulations for the issuance and transference of the permit from one pulling unit to another. The fee for such permit shall be Four Thousand Five Hundred Dollars ($4,500.00) and the permit shall expire one (1) year from the beginning movement date. Movements under such permit shall be made under such safety and equipment restrictions as the department may establish. The department shall specify the routes over which such movements may be conducted.

**SOURCES: Laws, 2003, ch. 538, § 1; Laws, 2006, ch. 312, § 1; Laws, 2008, ch. 337, § 1, eff from and after July 1, 2008.**

**Amendment Notes —** The 2006 amendment deleted former (2), which contained a July 1, 2006, repealer for the section.

The 2008 amendment substituted "one hundred fifty thousand (150,000)" for "one hundred forty thousand (140,000)" in the first sentence; deleted "and shall be nontransferable" from the end of the second sentence; and added the third sentence.

## § 63-5-53. Liability for damage to highway or structure caused by vehicle.

### ATTORNEY GENERAL OPINIONS

A municipality has authority to set weight limits of vehicles passing over municipal streets, and any driver operating a vehicle in contravention of any weight limit shall be liable for all damage which the highway or street may sustain as a result of that operation; further, municipal governing authorities may seek damages in a civil action. Richardson, May 16, 2003, A.G. Op. 03-0229.

# CHAPTER 7

# Equipment and Identification



## GENERAL PROVISIONS



## § 63-7-7. Operation of vehicle in violation of chapter.

### ATTORNEY GENERAL OPINIONS

Operator of an ATV or golf cart on the public roadway may be charged with operating a motor vehicle upon a public road without the proper safety equipment. Cook, Mar. 11, 2005, A.G. Op. 05-0033.

## § 63-7-9. Applicability of chapter.

### JUDICIAL DECISIONS

**1. In general.**

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per

se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

In an action pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., where a slow-moving county motor grader executed a turn on the highway, even though the operator did not give a hand signal, the grader operator was not negligent in failing to do so or for failing to keep a proper lookout, but the injured driver was negligent in passing the grader within 100 feet of an intersection and by failing to keep a proper lookout. Barnett v. Lauderdale County Bd. of Supervisors, 880 So. 2d 1085 (Miss. Ct. App. 2004).

## § 63-7-11. Requirements as to use of lights.

### JUDICIAL DECISIONS

**1. In general.**

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

## § 63-7-13. Requirements as to lighting equipment.

(1) **Head lamps on motor vehicles.** — Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head lamps with at least one (1) on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in Section 63-7-31.

(2) **Head lamps on motorcycles.** — Every motorcycle shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations set forth in Section 63-7-31.

(3) **Rear lamps.** — Every motor vehicle, trailer, semitrailer, pole trailer and any other vehicle which is being drawn in a train of vehicles shall be equipped with at least one (1) rear lamp mounted on the rear, which, when lighted, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear. However, any antique automobile, as defined under Section 27-19-47, and any street rod, as defined under Section 27-19-56.6, may be equipped with one or more rear lamps that have been modified to emit a blue, violet or purple light resembling rear lamps appearing on some American automobiles originally manufactured in the 1940s and 1950s.

Either a rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly readable from a distance of fifty (50) feet to the rear. Any rear lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps, cowl lamps or fender lamps are lighted.

(4) **Lamps on bicycles.** — Every bicycle shall be equipped with a lighted white lamp on the front thereof visible under normal atmospheric conditions from a distance of at least five hundred (500) feet in front of such bicycle and shall also be equipped with a reflex mirror reflector or lamp on the rear exhibiting a red light visible under like conditions from a distance of at least five hundred (500) feet to the rear of such bicycle.

(5) **Lights on other vehicles.** — All vehicles not required in this chapter to be equipped with special lighted lamps shall carry one or more lights, lamps or lanterns displaying a white light, visible under normal atmospheric conditions from a distance of not less than five hundred (500) feet to the front of such vehicle and shall display a reflex reflector or red light visible under like conditions from a distance of not less than three hundred (300) feet to the rear of such vehicle.

**SOURCES: Codes, 1942, § 8229-01; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 9; Laws, 1956, ch. 381; Laws, 1968, ch. 543, § 1; Laws, 2006, ch. 402, § 1, eff from and after July 1, 2006.**

**Amendment Notes** — The 2006 amendment added the second sentence in the first paragraph of (3).

## JUDICIAL DECISIONS

**1. In general.**

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because Miss. Code Ann. §§ 63-7-11, 63-7-13(3) (Rev. 2004) did not apply to the tractor, pursuant to Miss. Code Ann. § 63-7-9 (Rev. 2004), as it was employed for agricultural purposes. Jamison v. Barnes, 8 So. 3d 238 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

Dismissal of a petition for post-conviction relief was reversed and remanded for an evidentiary hearing because defendant made a prima facie showing that his attorney was deficient in recommending a plea to a weapons charge since there was no probable cause to stop a car where one taillight was working under Miss. Code Ann. § 63-7-13; however, there was no ineffective assistance of counsel shown based on a failure to explain an Alford plea or the failure to investigate. Moore v. State, 986 So. 2d 959 (Miss. Ct. App. 2007), reversed by 986 So. 2d 928, 2008 Miss. LEXIS 326 (Miss. 2008).

Officer had probable cause to stop defendant's vehicle based on his observation of an improper turn and a missing headlight, notwithstanding the fact that the officer had received word from dispatch to be on the lookout for a vehicle matching that description. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Because defendant's truck violated Miss. Code Ann. § 63-7-13(3), and a traffic violation had occurred, stopping the truck was reasonable; because the investigatory stop was based on a reasonable suspicion; after the ephedrine was seen in plain view, the officers had probable cause to search the vehicle. Walker v. State, 881 So. 2d 820 (Miss. 2004).

## § 63-7-19. Lights on police and emergency vehicles; lights on rural mail carrier vehicles.

(1) Except as otherwise provided for unmarked vehicles under Section 19-25-15 and Section 25-1-87, every police vehicle shall be marked with blue lights. Every ambulance and special use EMS vehicle as defined in Section 41-59-3 shall be marked with red lights front and back and also may be marked with white and amber lights in addition to red lights. Every emergency management/civil defense vehicle, including emergency response vehicles of the Department of Environmental Quality, shall be marked with blinking, rotating or oscillating red lights. Official vehicles of a 911 Emergency Communications District may be marked with red and white lights. Every wrecker or other vehicle used for emergency work, except vehicles authorized to use blue or red lights, shall be marked with blinking, oscillating or rotating amber colored lights to warn other vehicles to yield the right-of-way, as provided in Section 63-3-809. Only police vehicles used for emergency work may be marked with blinking, oscillating or rotating blue lights to warn other vehicles to yield the right-of-way. Only law enforcement vehicles, fire vehicles, private or department-owned vehicles used by firemen of volunteer fire departments which receive funds pursuant to Section 83-1-39 when responding to calls, emergency management/civil defense vehicles, emergency response vehicles of the Department of Environmental Quality, ambulances used for emergency work, and 911 Emergency Communications District vehicles may be marked with blinking, oscillating or rotating red lights to warn other vehicles to yield the right-of-way. This section shall not apply to school buses carrying lighting devices in accordance with Section 63-7-23.

(2) Any vehicle referred to in subsection (1) of this section also shall be authorized to use alternating flashing headlights when responding to any emergency.

(3) Any vehicle operated by a United States rural mail carrier for the purpose of delivering United States mail may be marked with two (2) amber colored lights on front top of the vehicle and two (2) red colored lights on rear top of the vehicle and alternatively or additionally may be marked with a white, flashing strobe light on the roof of the vehicle so as to warn approaching travelers to decrease their speed because of danger of colliding with the mail carrier as he stops and starts along the edge of the road, street or highway.

**SOURCES: Codes, 1942, § 8229-08; Laws, 1948, ch. 343, § 16; Laws, 1950, ch. 407, § 5; Laws, 1962, ch. 527; Laws, 1964, ch. 455, § 1; Laws, 1970, ch. 484, § 1; Laws, 1979, ch. 398, § 1; Laws, 1987, ch. 333, § 1; Laws, 1994, ch. 517, § 1; Laws, 1995, ch. 581, § 1; Laws, 2004, ch. 425, § 5; Laws, 2006, ch. 468, § 2, eff from and after passage (approved Mar. 23, 2006.)**

**Amendment Notes** — The 2006 amendment inserted "and alternatively or additionally may be marked with a white, flashing strobe light on the roof of the vehicle" following "lights on rear top of the vehicle" in (3).

ATTORNEY GENERAL OPINIONS

Nothing in this section authorizes the use of blinking, oscillating or rotating white lights for personal vehicles of volunteer firemen when responding to calls. Enlow, Jan. 3, 2003, A.G. Op. #02-0752.

## § 63-7-47. Display of flag on projecting load; display of rotating or oscillating amber strobe-type lamp or light-emitting diode light on projecting load during certain hours of the day.

(1) Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the rear or body of such vehicle, there shall be displayed at the extreme rear end of the load a red flag or cloth not less than sixteen (16) inches square.

(2) From one-half (½) hour before sunset to one-half (½) hour after sunrise, any vehicle transporting a load of timber products that extends more than four (4) feet beyond the bed or trailer of that vehicle, shall have affixed as close as practical to the end of the load a rotating or oscillating amber strobe-type lamp or light-emitting diode light.

**SOURCES: Codes, 1942, § 8229-16; Laws, 1938, ch. 200; Laws, 1948, ch. 343, § 24; Laws, 2001, ch. 557, § 3; Laws, 2011, ch. 434, § 1, eff from and after July 1, 2011.**

**Amendment Notes —** The 2011 amendment added (2).

## § 63-7-59. Windows and window glass generally; windshield wipers; tinted or darkened windows prohibited unless certified; additional fee for inspection stations conducting tests of light transmittance of motor vehicle windows; exceptions; penalties; public awareness program.

(1) No person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any sign or poster, or with any glazing material which causes a mirrored effect, upon the front windshield, side wings or side or rear windows of the vehicle, other than a certificate or other paper required or authorized to be so displayed by law. No person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any tinted film, glazing material or darkening material of any kind on the windshield of a motor vehicle except material designed to replace or provide a sun shield in the uppermost area as authorized to be installed by manufacturers of vehicles under federal law.

(2) From and after July 1, 2006, no person shall drive any motor vehicle required to be registered in this state upon the public roads, streets or highways in this state with any window tinted or darkened, by tinted film or otherwise, unless:

(a) The windshield of the vehicle has affixed to it a label as provided under subsection (6) of this section certifying that all the windows of the vehicle have a light transmittance of twenty-eight percent (28%) or more; or

(b) The owner or operator of the vehicle has a certificate of medical exemption issued under subsection (4) of this section.

(3) The prohibitions of subsection (2) of this section shall not apply to (a) school buses, other buses used for public transportation, any bus or van owned or leased by a nonprofit organization duly incorporated under the laws of this state or any funeral home services vehicle, any limousine owned or leased by a private or public entity, or any government-owned law enforcement or fire department vehicle or any volunteer fire department vehicle; (b) any window behind the front two (2) side windows, including the rear window, of any pickup truck, van, motor home, recreational vehicle, sport utility vehicle or multipurpose vehicle that has been tinted or darkened after factory delivery to the extent that the light transmittance of the window meets the minimum light transmittance requirements authorized to be installed for that window and for that vehicle under federal law or regulations before factory delivery; or (c) any other motor vehicle the windows of which have been tinted or darkened before factory delivery as permitted by federal law or federal regulations.

(4) Notwithstanding the provisions of subsection (2) of this section, it shall be lawful for any person who has been diagnosed by a physician licensed to practice medicine in the State of Mississippi as having a physical condition or disease that is seriously aggravated by minimum exposure to sunlight to place or have placed upon the windshield or windows of any motor vehicle which he owns or operates or within which he regularly travels as a passenger tinted film or other darkening material that would otherwise be in violation of this section. However, any vehicle, in order to be exempt under this subsection (4), shall have prominently displayed on the vehicle dashboard a certificate of medical exemption on a form prepared by the Commissioner of Public Safety and signed by the person on whose behalf the certificate is issued. The special certificate authorized by this subsection (4) shall be issued free of charge to the applicants through the offices of the tax collectors of the counties. Each applicant shall present to the issuing official (a) an affidavit signed personally by the applicant and signed and attested by a physician which states the applicant's physical condition or disease which entitles him to an exemption under this subsection (4); and (b) proof of ownership of the motor vehicle by the applicant, or a signed affidavit by the owner of a motor vehicle operated for the use of the applicant, for which he is obtaining the certificate.

(5) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(6) The Department of Public Safety shall issue labels to official motor vehicle inspection stations for affixing to the windshield of every motor vehicle required to be inspected in this state with a window therein which has been tinted or darkened with any tinted film or other darkening material after

factory delivery. The label shall be affixed to the lower left corner of the windshield directly above the certificate of inspection, shall be legible from outside the vehicle, and shall indicate the label registration number, a certification of compliance with Mississippi law, and such other information as the Commissioner of Public Safety deems appropriate. The labels shall be of a type which is pressure-sensitive, self-destructive upon removal, and no larger than one (1) inch square in size. Before affixing the label, the inspection station shall conduct a test to determine that the window complies with the light transmittance requirements prescribed under subsection (2) of this section. The test shall be conducted using such methods or devices as may be approved and certified not less often than annually by the Department of Public Safety. An inspection station shall not be required by the department to enter into a bond separate and apart from any bond required for official inspection stations as provided under Section 63-13-5, but the bond required under Section 63-13-5 shall be considered entirely sufficient for the purposes of this section. For conducting such tests, motor vehicle inspection stations shall charge and collect a fee of Five Dollars ($5.00). Two Dollars ($2.00) of the fee shall be retained by the inspection station, and Three Dollars ($3.00) of the fee shall be remitted to the Department of Public Safety and may be expended, upon legislative appropriation, for the operational expenses of the department. No fee shall be charged unless a test is actually performed under this subsection (6), and no inspection station shall be required to perform a test to determine if the windows of a motor vehicle have been tinted or darkened with any tinted film or other darkening material after factory delivery so long as the inspection station does not issue a motor vehicle inspection certificate for any such vehicle. The presence of a label upon the windshield of a motor vehicle shall indicate that the person who affixed the label certifies that the windows of the vehicle meet the restrictions of subsection (2) of this section as to light transmittance.

(7) No person shall install any tinted film, darkening material, glazing material or any other material upon the windshield or any window of a motor vehicle which, after the installation thereof, would result in such vehicle being in violation of subsection (2) of this section.

(8) No motor vehicle inspection certificate shall be issued for a vehicle on which the windshield or any window of the vehicle has been darkened by the installation of tinted film or by other means, except as authorized under this section. Inspection certificates may be issued for motor vehicles having labels affixed pursuant to subsection (6) of this section and for motor vehicles for which a certificate of medical exemption has been issued pursuant to subsection (4) of this section.

(9) It shall be unlawful for any person to alter or reproduce any label or certificate of medical exemption approved by the Commissioner of Public Safety under this section for the purpose of misleading law enforcement officers or motor vehicle inspection stations, or to knowingly use any approved label or certificate except as authorized by this section.

(10) Any person violating subsection (7), (8) or (9) of this section, upon conviction, shall be punished by a fine of not more than One Thousand Dollars

($1,000.00), or imprisonment in the county jail for not more than three (3) months, or by both such fine and imprisonment.

(11) Any violation of this section other than a violation of subsection (7), (8) or (9) of this section shall be punishable upon conviction as provided in Section 63-7-7.

(12) Violations of this section shall be enforced only by law enforcement officers of the Mississippi Department of Public Safety and municipal law enforcement officers of municipalities having a population of two thousand (2,000) or more on the public roads, streets and highways under their jurisdiction.

(13) The Department of Public Safety shall initiate a public awareness program designed to inform and educate persons of the provisions of this section. Funds for such public awareness program shall be available through the office of the Governor's representative for highway safety programs.

**SOURCES: Codes, 1942, § 8253; Laws, 1938, ch. 200; Laws, 1983, ch. 416; Laws, 1988, ch. 521, § 1; Laws, 1990, ch. 438, § 1; Laws, 1992, ch. 320, § 1; Laws, 2005, ch. 328, § 1; Laws, 2006, ch. 468, § 1; Laws, 2012, ch. 500, § 1; Laws, 2012, ch. 528, § 1, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Section 1 of Chapter 528, Laws of 2012, effective July 1, 2012 (approved May 17, 2012), amended this section. Section 1 of Chapter 500, Laws of 2012, effective July 1, 2012 (approved May 1, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 528, Laws of 2012, which contains language that specifically provides that it supersedes § 63-7-59 as amended by Laws of 2012, ch. 500.

**Amendment Notes —** The 2005 amendment rewrote the section to require motor vehicle inspection stations to conduct a test of the luminous reflectance and light transmittance of windows of motor vehicles that have been tinted or darkened after facotry delivery and to authorize motor vehicle inspection stations to collect an additional fee for conducting such tests.

The 2006 amendment rewrote the section.

The first 2012 amendment (ch. 500), in (3)(a), inserted "government-owned", "or fire department", "or any volunteer fire department vehicle."

The second 2012 amendment (ch. 528), inserted "government-owned", "or fire department", and "or any volunteer fire department vehicle" following "private or public entity, or any" in (3); rewrote the first two sentences in (4); and made minor stylistic changes.

## § 63-7-61. Safety glass.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-7-64. Motorcycle or motor scooter crash helmets.

No person shall operate or ride upon any motorcycle or motor scooter upon the public roads or highways of this state unless such person is wearing on his

or her head a crash helmet that complies with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218). Violation of this section shall be deemed a violation of the traffic regulations and rules of the road and punishable as provided by Section 63-9-11. This section shall not apply to persons riding in a parade, at a speed not to exceed thirty (30) miles per hour, if the person is eighteen (18) years of age or older.

**SOURCES: Laws, 1974, ch. 461; Laws, 2012, ch. 544, § 1, eff from and after passage (approved May 26, 2012.)**

**Editor's Note —** Laws of 2012, ch. 544, § 4 provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

**Amendment Notes —** The 2012 amendment substituted "that complies with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218)" for "of the type and design inspected and approved by the American Association of Motor Vehicle Administrators" in the first sentence, and added the last sentence.

## § 63-7-65. Horns and other warning devices.

### JUDICIAL DECISIONS

**1. In general.**

Directed verdict was properly entered in favor of a driver in a wrongful death case because speeding was insufficient to show liability since it was not the cause of an accident with a lawnmower, there was no duty to blow a horn under Miss. Code Ann. § 63-7-65(1) for a sudden action, and she used due care in passing and giving the lawnmower space. Lias v. Flowers, 955 So. 2d 337 (Miss. Ct. App. 2006), writ denied by 956 So. 2d 228, 2007 Miss. LEXIS 212 (Miss. 2007).

## § 63-7-71. Warning and safety appliances for trucks and buses; display.

### JUDICIAL DECISIONS

**4. Jury instructions.**

Jury instruction in a wrongful death action resulting from a motor vehicle accident contained inconsistent and incorrect statements of the law regarding the statute; the first paragraph of the instruction, which appeared to be a statement of the law, made it possible for the jury to impose liability without considering the reasonableness of an employee's actions in parking a trailer under the circumstances. Dooley v. Byrd (In re Dooley), 64 So. 3d 951 (Miss. 2011).

## § 63-7-87. Enforcement of §§ 63-7-83 and 63-7-85.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by

the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-7-91. Slow-moving vehicle safety emblem; requirement.

### JUDICIAL DECISIONS

**1. Applicability.**

Trial court erred by granting appellee driver summary judgment in appellant driver's negligence action for a highway accident on the ground that appellant's operation of the tractor was negligent per se because it was clear that the tractor was equipped with a triangular reflector, not reflectorized tape, and therefore was not prohibited under Miss. Code Ann. § 63-7-91 from operating on the highway after sunset. Jamison v. Barnes, 8 So. 3d 238 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 210 (Miss. 2009).

## § 63-7-103. Trooper Steve Hood Act: The Nitrous Oxide Prohibition Act; use of nitrous oxide in motor vehicle or motorcycle driven on streets or highways prohibited; penalties.

(1) This section shall be known and may be cited as the "Trooper Steve Hood Act: The Nitrous Oxide Prohibition Act."

(2) For the purposes of this section:

(a) "Motor vehicle" has the meaning ascribed in Section 27-19-3; however, the term "motor vehicle" does not include any vehicle with a gross vehicle or combination weight greater than ten thousand (10,000) pounds.

(b) "Motorcycle" has the meaning ascribed in Section 27-19-3.

(c) "Nitrous oxide" means a gas or liquid form of nitrous oxide that is used to increase the speed or performance of a motor vehicle or motorcycle.

(d) "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(3)(a)(i) A person shall not operate on a street or highway a motor vehicle or motorcycle that is equipped to supply the engine with nitrous oxide unless the nitrous oxide supply system is made inoperative by means of disconnecting the nitrous oxide feed line from the engine or removing the nitrous oxide canister from the motor vehicle or motorcycle.

(ii) No fine or imprisonment shall be imposed against the operator for a violation of this section, unless at the time the operator was charged with a violation of this section he also was charged with some other offense under Title 63, Mississippi Code of 1972, and he is convicted of both offenses.

(b) A person convicted for the first offense of violating this subsection shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), imprisoned for not more than forty-eight (48) hours, or both.

(c) For a second conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be

fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year, and shall be sentenced to community service work for not less than ten (10) days nor more than one (1) year.

(d)(i) For a third or subsequent conviction of any person violating this subsection, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; however, for any such offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail at the discretion of the circuit court judge.

(ii) After a conviction under this subsection and upon receipt of the court abstract, the Commissioner of Public Safety shall suspend the driver's license and driving privileges of the person for not less than five (5) years.

(iii) After a conviction under this subsection, the law enforcement agency shall seize the vehicle owned by any person convicted of a third or subsequent violation of this subsection, if the convicted person was driving the vehicle at the time the offense was committed. The vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53.

**SOURCES: Laws, 2010, ch. 457, § 1, eff from and after July 1, 2010.**

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

## CHILD PASSENGER RESTRAINT DEVICES

SEC.



### § 63-7-301. Requirement of device or belt positioning booster seat system; failure to provide and use device or belt positioning booster seat system not deemed negligence.

(1)(a) Every person transporting a child under the age of four (4) years in a passenger motor vehicle, and operated on a public roadway, street or highway within this state, shall provide for the protection of the child by properly using a child passenger restraint device or system meeting applicable federal motor vehicle safety standards.

(b) Every person transporting a child in a passenger motor vehicle operated on a public roadway, street or highway within this state, shall

provide for the protection of the child by properly using a belt positioning booster seat system meeting applicable federal motor vehicle safety standards if the child is at least four (4) years of age, but less than seven (7) years of age and measures less than four (4) feet nine (9) inches in height or weighs less than sixty-five (65) pounds.

(c) If more than two (2) children who are required under subsection (1) of this section to use a booster seat are being transported in a vehicle at one time, and the vehicle only has two (2) lap and shoulder belts in the rear seat, then only the two (2) children sitting in the seats with the lap and shoulder belts are required to use a belt positioning booster seat system and safety belt, and any other children may be secured with a safety seat lap belt only.

(2) The term "passenger motor vehicle" as used in Sections 63-7-301 through 63-7-311 has the same meaning as defined in Section 63-2-1(2). Sections 63-7-301 through 63-7-311 do not apply to the vehicles described in Section 63-2-1(3).

(3) Failure to provide and use a child passenger restraint device or system or a belt positioning booster seat system shall not be considered contributory or comparative negligence.

**SOURCES: Laws, 1983, ch. 400, § 1; Laws, 1994, ch. 325, § 1; Laws, 1998, ch. 501, § 3; Laws, 2008, ch. 520, § 1, eff from and after July 1, 2008.**

**Amendment Notes** — The 2008 amendment added (1)(b) and (c); and inserted "or a belt positioning booster seat system" in (3).

## § 63-7-311. Notice of requirement for devices.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

# CHAPTER 9

## Traffic Violations Procedure

SEC.

## § 63-9-11. Penalties for violations of Chapters 3, 5 or 7.

(1) It is a misdemeanor for any person to violate any of the provisions of Chapter 3, 5 or 7 of this title, unless such violation is by such chapters or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of such chapters for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter such person shall be punished by a fine of not more than Two Hundred Dollars ($200.00) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(3)(a) Whenever a person not covered under Section 63-1-55 is charged with a misdemeanor violation of any of the provisions of Chapter 3, 5 or 7 of this title, the person shall be eligible to participate in not less than four (4) hours of a traffic safety violator course and thereby have no record of the violation on the person's driving record if the person meets all the following conditions:

(i) The defendant has a valid Mississippi driver's license or permit.

(ii) The defendant has not had a conviction of a violation under Chapter 3, 5 or 7 of this title within three (3) years before the current offense; any conviction entered before October 1, 2002, does not constitute a prior offense for the purposes of this subsection (3).

(iii) The defendant's public and nonpublic driving record as maintained by the Department of Public Safety does not indicate successful completion of a traffic safety violator course under this section in the three-year period before the offense.

(iv) The defendant files an affidavit with the court stating that this is the defendant's first conviction in more than three (3) years or since October 1, 2002, whichever is the lesser period of time; the defendant is not in the process of taking a course under this section; and the defendant has not completed a course under this section that is not yet reflected on the defendant's public or nonpublic driving record.

(v) The offense charged is for a misdemeanor offense under Chapter 3, 5 or 7 of this title.

(vi) The defendant pays the applicable fine, costs and any assessments required by law to be paid upon conviction of such an offense.

(vii) The defendant pays to the court an additional fee of Ten Dollars ($10.00) to elect to proceed under the provisions of this subsection (3).

(b)(i)1. An eligible defendant may enter a plea of nolo contendere or guilty in person or in writing and present to the court, in person or by mail postmarked on or before the appearance date on the citation, an

oral or written request to participate in a course under this subsection (3).

2. The court shall withhold acceptance of the plea and defer sentencing in order to allow the eligible defendant ninety (90) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at the cost of the defendant. Upon proof of successful completion entered with the court, the court shall dismiss the prosecution and direct that the case be closed. The only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining eligibility under this subsection (3).

(ii) If a person pleads not guilty to a misdemeanor offense under any of the provisions of Chapter 3, 5 or 7 of this title but is convicted, and the person meets all the requirements under paragraph (a) of this subsection, upon request of the defendant the court shall suspend the sentence for such offense to allow the defendant forty-five (45) days to successfully complete not less than four (4) hours of a court-approved traffic safety violator course at his own cost. Upon successful completion by the defendant of the course, the court shall set the conviction aside, dismiss the prosecution and direct that the case be closed. The court on its own motion shall expunge the record of the conviction, and the only record maintained thereafter shall be the nonpublic record required under Section 63-9-17 solely for use by the courts in determining an offender's eligibility under this subsection (3).

(c) An out-of-state resident shall be allowed to complete a substantially similar program in his home state, province or country provided the requirements of this subsection (3) are met, except that the necessary valid driver's license or permit shall be one issued by the home jurisdiction.

(d) A court shall not approve a traffic safety violator course under this subsection (3) that does not supply at least four (4) hours of instruction, an instructor's manual setting forth an appropriate curriculum, student workbooks, some scientifically verifiable analysis of the effectiveness of the curriculum and provide minimum qualifications for instructors.

(e) A court shall inform a defendant making inquiry or entering a personal appearance of the provisions of this subsection (3).

(f) The Department of Public Safety shall cause notice of the provisions of this subsection (3) to be available on its official web site.

(g) Failure of a defendant to elect to come under the provisions of this subsection (3) for whatever reason, in and of itself, shall not invalidate a conviction.

(h) No employee of the sentencing court shall personally benefit from a defendant's attendance of a traffic safety violator course. Violation of this prohibition shall result in termination of employment.

(i) The additional fee of Ten Dollars ($10.00) imposed under this subsection (3) shall be forwarded by the court clerk to the State Treasurer for deposit into a special fund created in the State Treasury. Monies in the

special fund may be expended by the Department of Public Safety, upon legislative appropriation, to defray the costs incurred by the department in maintaining the nonpublic record of persons who are eligible for participation under the provisions of this subsection (3).

(4) The provisions of subsection (3) of this section shall not be applicable to violation of any of the provisions of Chapter 3, 5 or 7 of this title committed by the holder of a commercial driver's license issued under the Mississippi Commercial Driver's License Law, regardless of whether the violation occurred while operating a commercial motor vehicle or some other motor vehicle.

**SOURCES: Codes, 1942, § 8275; Laws, 1938, ch. 200; Laws, 2002, ch. 566, § 1; Laws, 2004, ch. 315, § 1; Laws, 2005, ch. 541, § 6, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment added (4).

**Cross References —** Applicability of subsection (3) of this section to defendant who holds commercial driver's license or was operating commercial motor vehicle when violation occurred and who is charged with violating state of local traffic law other than parking violation, see § 63-1-222.

### ATTORNEY GENERAL OPINIONS

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

Miss. Code Ann. § 63-9-11(3)(d) clearly and unequivocally requires instruction of an approved traffic safety violator course by a human being when it specifies that the course "provide minimum qualifications for instructors." This requirement does not conflict with Miss. Code Ann. § 63-1-55 allowing computerized defensive driving instruction for minors. Dearing, March 2, 2007, A.G. Op. #07-00091, 2007 Miss. AG LEXIS 80.

## § 63-9-17. Maintenance of records relating to charged offenses; records and reports of convictions.

(1) Every court shall keep a full record of the proceedings of every case in which a person is charged with any violation of law regulating the operation of vehicles on the highways, streets or roads of this state.

(2) Unless otherwise sooner required by law, within five (5) days after the conviction of a person upon a charge of violating any law regulating the operation of vehicles on the highways, streets or roads of this state, every court in which such conviction was had shall prepare and immediately forward to the Department of Public Safety an abstract of the record of said court covering the case in which said person was so convicted, which abstract must be certified by the person so authorized to prepare the same to be true and correct.

(3) Said abstract must be made upon a form approved by the Department of Public Safety, and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, and if the fine was satisfied by

prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture, as the case may be.

(4) Every court shall also forward a like report to the Department of Public Safety upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

(5) Every court shall also forward a like report to the Department of Public Safety after the satisfactory completion by a defendant of an approved traffic safety violator course under Section 63-9-11, and the department shall make and maintain a private, nonpublic record to be kept for a period of ten (10) years. The record shall be solely for the use of the courts in determining eligibility under Section 63-9-11, as a first-time offender, and shall not constitute a criminal record for the purpose of private or administrative inquiry. Reports forwarded to the Department of Public Safety under this subsection shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(6) The failure by refusal or neglect of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

(7) The Department of Public Safety shall keep copies of all abstracts received hereunder for a period of three (3) years at its main office and the same shall be open to public inspection during reasonable business hours. This subsection shall not apply to nonpublic records maintained solely for the use of the courts in determining offender eligibility.

**SOURCES: Codes, 1942, § 8281; Laws, 1938, ch. 200; Laws, 1985, ch. 363, § 4; Laws, 1990, ch. 351, § 1; Laws, 2002, ch. 566, § 2; Laws, 2004, ch. 315, § 2; Laws, 2005, ch. 541, § 7, eff from and after July 1, 2005.**

**Amendment Notes** — The 2005 amendment substituted "five (5) days" for "forty-five (45) days" in (2); and substituted "ten (10) years" for "three (3) years" in the first sentence of (5).

## § 63-9-21. Uniform Traffic Ticket Law.

(1) This section shall be known as the Uniform Traffic Ticket Law.

(2) All traffic tickets, except traffic tickets filed electronically as provided under subsection (8) of this section, shall be printed in the original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety. All traffic tickets shall be uniform as prescribed by the Commissioner of Public Safety and the Attorney General, except as otherwise provided in subsection (3)(b) and except that the Commissioner of Public Safety and the Attorney General may alter the form and content of traffic tickets to meet the varying requirements of the different law enforcement agencies. The Commissioner of Public Safety and the Attorney General shall prescribe a separate traffic ticket, consistent with the provisions of subsection (3)(b) of this section, to be used exclusively for violations of the Mississippi Implied Consent Law.

(3)(a) Every traffic ticket issued by any sheriff, deputy sheriff, constable, county patrol officer, municipal police officer or State Highway Patrol officer for any violation of traffic or motor vehicle laws shall be issued on the uniform traffic ticket or uniform implied consent violation ticket consisting of an original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety.

(b) The traffic ticket, citation or affidavit issued to a person arrested for a violation of the Mississippi Implied Consent Law shall contain a place for the trial judge hearing the case or accepting the guilty plea, as the case may be, to sign, stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised of his right to have an attorney. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be entered or written on the ticket, citation or affidavit.

(c) Every traffic ticket shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time the person is to appear to answer the charge. The ticket shall include information that will constitute a complaint charging the offense for which the ticket was issued, and when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed thereunder.

(d) The traffic ticket shall contain a space to include the current address and current telephone number of the person being charged. It shall not contain a space to include the social security number of the person being charged.

(4) All traffic tickets, except traffic tickets filed electronically under subsection (8) of this section, shall be bound in book form, shall be consecutively numbered and each traffic ticket shall be accounted for to the officer issuing such book. The traffic ticket books shall be issued to sheriffs, deputy sheriffs, constables and county patrol officers by the chancery clerk of their respective counties, to each municipal police officer by the clerk of the municipal court, and to each State Highway Patrol officer by the Commissioner of Public Safety.

(5) The chancery clerk, clerk of the municipal court and the Commissioner of Public Safety shall keep a record of all traffic ticket books issued and to whom issued, accounting for all books printed and issued. All traffic tickets submitted electronically shall be filed automatically with the Commissioner of Public Safety and either the clerk of the municipal court or clerk of the justice court using the system of electronic submission for the purpose of maintaining a record of account as prescribed by this subsection (5).

(6) The original traffic ticket, unless the traffic ticket is filed electronically as provided under subsection (8) of this section, shall be delivered by the officer issuing the traffic ticket to the clerk of the court to which it is returnable to be retained in that court's records and the number noted on the docket. However, if a ticket is issued and the person is incarcerated based upon the conduct for which the ticket was issued, the ticket shall be filed with the clerk of the court

to which it is returnable no later than 5:00 p.m. on the next business day, excluding weekends and holidays, after the date and time of the person's incarceration; however, failure to timely file the traffic ticket shall not be grounds for dismissal of the traffic ticket and shall not prevent the person's release from incarceration. The officer issuing the traffic ticket shall also give the accused a copy of the traffic ticket. The clerk of the court shall file a copy with the Commissioner of Public Safety within forty-five (45) days after judgment is rendered showing such information about the judgment as may be required by the commissioner or, in cases in which no judgment has been rendered, within one hundred twenty (120) days after issuance of the ticket. Other copies that are prescribed by the commissioner pursuant to this section shall be filed or retained as may be designated by the commissioner. All copies shall be retained for at least two (2) years.

(7) Failure to comply with the provisions of this section shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00).

(8)(a) Law enforcement officers and agencies may file traffic tickets, including tickets issued for a violation of the Mississippi Implied Consent Law, by computer or electronic means if the ticket conforms in all substantive respects, including layout and content, as provided under subsections (2) or (3)(b) of this section. The provisions of subsection (4) of this section requiring tickets bound in book form do not apply to a ticket that is produced by computer or electronic means. Information concerning tickets produced by computer or electronic means shall be available for public inspection in substantially the same manner as provided for the uniform tickets described in subsection (2) of this section.

(b) The defendant shall be provided with a paper copy of the ticket. A law enforcement officer who files a ticket electronically shall be considered to have certified the ticket and has the same rights, responsibilities and liabilities as with all other tickets issued pursuant to this section.

**SOURCES: Codes, 1942, § 8285.5; Laws, 1958, ch. 260, §§ 1-7; Laws, 1982, ch. 423, § 13; Laws, 1982, ch. 464; Laws, 1984, ch. 352; Laws, 1985, ch. 363, § 3; Laws, 1991, ch. 480, § 3; Laws, 2003, ch. 550, § 1; Laws, 2009, ch. 376, § 1; Laws, 2009, ch. 481, § 1; Laws, 2009, ch. 566, § 1; Laws, 2011, ch. 342, § 1; Laws, 2012, ch. 464, § 1; Laws, 2012, ch. 550, § 1, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Section 1 of ch. 376, Laws of 2009, effective from and after passage (approved March 17, 2009), amended this section and Section 1 of ch. 481 Laws of 2009, effective from and after July 1, 2009 (approved April 2, 2009), also amended this section. Section 1 of ch. 566, Laws of 2009, effective from and after passage (approved May 13, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 566, Laws of 2009, pursuant to its own terms, which contain language that specifically provides that it supersedes the amendments made by ch. 376, § 1, and ch. 481, § 1.

Section 1 of Chapter 550, Laws of 2012, effective July 1, 2012 (approved May 22, 2012), amended this section. Section 1 of Chapter 464, Laws of 2012, effective July 1, 2012 (approved April 23, 2012), also amended this section. As set out above, this section

reflects the language of Section 1 of Chapter 550, Laws of 2012, which contains language that specifically provides that it supersedes § 63-9-21 as amended by Laws of 2012, ch.464.

**Amendment Notes —** The first 2009 amendment (ch. 376), added the second sentence of (6).

The second 2009 amendment (ch. 481) added (3)(d).

The third 2009 amendment (ch. 566) provided for two versions of the section; in the version effective until July 1, 2009, added the second sentence of (6); and in the version effective from and after July 1, 2009, added (3)(d), and added the second sentence of (6).

The 2011 amendment substituted "in subsection (3)(b) and except that the Commissioner of Public Safety and the Attorney General may alter" for "in subsection (3)(b) and except that such state officers may alter" in the second sentence of (2), and substituted "the Commissioner of Public Safety" for "State Auditor" everywhere else the phrase appears in the section; substituted "rendered showing such information about the judgment as may be required by the commissioner or, in cases" for "rendered showing the amount of the fine and cost or, in cases" in the third sentence of (6); and made minor stylistic changes.

The first 2012 amendment (ch. 464), rewrote (3); inserted "the person's" preceding "incarceration" near the end of the second sentence in (6); and deleted former (8)(c) which read: "The provisions of this subsection (8) do not apply to tickets issued for a violation of the Mississippi Implied Consent Law."

The second 2012 amendment (ch. 550), in (3)(a), deleted "Except as otherwise provided in paragraph (b) of this subsection" from the beginning, and inserted "or uniform implied consent violation ticket" near the middle; in (3)(b), deleted "shall be uniform throughout all jurisdictions in the State of Mississippi. It shall" following "Implied Consent Law" in the first sentence, and inserted " entered or" in the last sentence; deleted "this provision does not affect the right a person may have under other law to use the person's social security number as the person's driver's license number" from the end of (3)(d); added the last sentence in (5); in the second sentence of (6), substituted "the person's incarceration" for "such incarceration" and added "however, failure to timely file the traffic ticket shall not be grounds for dismissal of the traffic ticket and shall not prevent the person's release from incarceration"; in the first sentence of (8)(a), inserted "including tickets issued for a violation of the Mississippi Implied Consent Law" and substituted "subsections (2) or (3)(b)" for "subsection (2); and deleted (8)(c), which read: "The provisions of this subsection (8) do not apply to tickets issued for a violation of the Mississippi Implied Consent Law."

## JUDICIAL DECISIONS

**1. In general.**

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Citation charging defendant with DUI was not flawed because it contained a P. O. box address for the municipal court rather than a physical address; Miss. Code Ann. § 63-9-21 did not require that a traffic citation contain the court's physical address. Godbold v. Water Valley, 962 So. 2d 133 (Miss. Ct. App. 2007).

Citation charging defendant with driving under the influence of intoxicating liquor indicated an arraignment date, but did not indicate whether it would be a.m. or p.m.; the omission did not render the citation defective under Miss. Code Ann. § 63-9-21(3)(c). Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss.

2008).

Citation charging defendant with driving under the influence of intoxicating liquor was not defective because it listed the incorrect municipal court address; Miss. Code Ann. § 63-9-21(3)(c) does not require that the address of the municipal court be contained on the citation. Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Where all of the information required by Miss. Code Ann. § 63-9-21(3)(c) was contained on the traffic citation issued to defendant, and because there was no requirement that the address of the municipal court be contained on the ticket, the sworn complaint requirement of Miss. Code Ann. § 21-23-7 was met, and the municipal court had jurisdiction over defendant's prosecution. Loveless v. City of Booneville, 958 So. 2d 230 (Miss. Ct. App. 2007).

Fact that an older citation form was issued to defendant in a DUI case did not mean that it was insufficient just because it was not a uniform traffic ticket since the issuing municipality had obtained new tickets; moreover, the law applicable to defendant's case involving the standards for operators of commercial vehicles had not changed. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Fact that a traffic ticket issued in a driving under the influence case had a scrivener's error regarding the date of offense did not render it ineffective under Miss. Unif. Cir. & Cty. R. 7.06 because defendant was put on notice of the date of the offense by the fact that the date was correct on the other two citations he was issued. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

Miss. Code Ann. § 63-9-21 does not state that a citation must contain the address of a court; therefore, the fact that a traffic ticket in a DUI case had the wrong court address did not render it ineffective because it stated that the arraignment was to take place in a specific court. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

## ATTORNEY GENERAL OPINIONS

An individual, who is not a municipal police officer, may file an affidavit with the municipal court charging another individual with a traffic offense that occurred within the municipal limits. A uniform traffic ticket need not be used in such a circumstance. Sorrell, May 21, 2004, A.G. Op. 04-0220.

The law enforcement officer who actually issues the ticket to the defendant must sign the affidavit/ticket and acknowledge the affidavit when filed with the clerk of the court. One officer cannot acknowledge an affidavit/citation that is issued by another officer. Hatcher, July 30, 2004, A.G. Op. 04-0369.

Policemen acting in their capacity as employees of a city must use traffic tickets issued by that city and identifying that city's municipal court as the court hearing the cause. Any tickets issued by the sheriff's office, constables, or highway patrolmen should be issued on tickets identifying their respective departments and heard by justice court. Bush, Jan. 14, 2005, A.G. Op. 04-0641.

A traffic ticket that contains the information set forth in Section 63-9-21 constitutes a "sworn affidavit" as referred to in Section 21-23-7(1) when the officer who issues the ticket has it properly attested and filed with the proper court; a criminal affidavit can be acknowledged by any person authorized by law to administer oaths and this would include a court clerk or deputy court clerk from another jurisdiction or a notary public. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

An officer issuing a ticket may have it acknowledged by a court clerk of one county and mail the ticket (or have the clerk mail the ticket) to the clerk of the court to which the ticket is returnable. Carter, Apr. 1, 2005, A.G. Op. 05-0042.

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Since campus police officers are vested with the powers of a constable, a campus police department should obtain uniform traffic tickets from the chancery clerk of the county. Via, Oct. 28, 2005, A.G. Op. 05-0522.

The department of public safety of a community hospital does not have authority to issue traffic citations on the public streets surrounding the hospital or to persons operating a motor vehicle on the hospital's premises. Castle, Nov. 14, 2005, A.G. Op. 05-0498.

A traffic citation must indicate the title of the individual acknowledging the citation in order for it to be properly sworn to; however, if the lack of "title" is raised, the court may allow the citation to be amended to reflect the proper title of the one administering the oath. McClellan, Apr. 21, 2006, A.G. Op. 06-0103.

Because the uniform traffic ticket approved by the state auditor and the attorney general contains a line for the address of the court, it may not be left blank. Mullen, June 2, 2006, A.G. Op. 06-0216.

The uniform traffic citation provided should not be used for a violation of a municipal ordinance. Franklin, Nov. 17, 2006, A.G. Op. 06-0592.

## § 63-9-25. Deposit of driver's license in lieu of bail.

### ATTORNEY GENERAL OPINIONS

An officer may release a defendant that has been charged with a traffic offense and is in his custody on a written notice to appear or if that officer has been designated by the municipal judge, may take a bond, cash or otherwise, from such a defendant. Powell, Jan. 10, 2003, A.G. Op. #02-0766.

This section allows a defendant to post his driver's license in lieu of bond when he is charged with a traffic offense. The court may not set a bail bond instead of accepting his license in lieu of bail. Strait, Sept. 26, 2003, A.G. Op. 03-0519.

## § 63-9-31. Additional surcharge for traffic violations to fund automation of citations issued by Highway Safety Patrol and wireless radio communications programs.

(1) In addition to any other monetary penalties and other penalties imposed by law, any county, municipality or the Pearl River Valley Water Supply District Patrol which participates in a wireless radio communications program approved by the applicable governing authorities may assess an additional surcharge in an amount not to exceed Ten Dollars ($10.00) on each person upon whom a court imposes a fine or other penalty for each violation of Title 63, Mississippi Code of 1972, except offenses relating to vehicular parking or registration. On all citations issued by Mississippi Highway Safety Patrol officers, a surcharge in the amount of Ten Dollars ($10.00) shall be collected by the court and deposited as provided in subsection (2) of this section. The proceeds from the surcharge on citations issued by county and municipal law enforcement officers or the Pearl River Valley Water Supply District Patrol may be used by a county or municipality only to fund that county's or municipality's or the Pearl River Valley Water Supply District Patrol's partic-

ipation in the wireless radio communications program by funding public safety wireless communications systems and related computer and communications equipment. The proceeds from the surcharge on citations issued by Mississippi Highway Safety Patrol officers shall be used as provided in subsection (2) of this section. All proceeds from the surcharge imposed by this subsection shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning. The Office of Public Safety Planning shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating governmental entities. The maximum amount that a governmental entity may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

(2) Deposits into the special fund resulting from citations issued by the Mississippi Highway Safety Patrol shall be utilized as follows: Fifty percent (50%) of the deposits into the special fund shall be used to automate the citations issued by Mississippi Highway Safety Patrol officers (including the transmittal of citations to the justice court, retrieval of the disposition from the justice court, and updating the driver's records) and fifty percent (50%) of the deposits into the special fund shall be used for the purpose of funding wireless communications and related computer equipment and computer software, subject to the approval of the Mississippi Department of Information Technology Services.

(3) Approval of a wireless radio communications program must be given by the applicable governing authorities when:

(a) The program includes the sharing of support facilities including, but not limited to, towers, shelters and microwave by participating entities; or

(b) The program includes the establishment of a mutual aid system using common radio frequency channels between participating entities; or

(c) The program sets forth a feasible methodology that utilizes the radio frequency spectrum in an efficient manner.

(4) Participating counties, municipalities, the Pearl River Valley Water Supply District Patrol and the Mississippi Highway Safety Patrol must provide notification of facilities available for interoperability to the Mississippi Department of Information Technology Services annually.

(5) Counties and municipalities and the Pearl River Valley Water Supply District Patrol participating in a wireless radio communications program and the Mississippi Highway Safety Patrol must comply with competitive bidding requirements prescribed in Section 31-7-13 and are encouraged to utilize an open architecture, nonproprietary system.

**SOURCES: Laws, 2001, ch. 569, § 12; Laws, 2002, ch. 486, § 1; Laws, 2004, ch. 441, § 1; Laws, 2006, ch. 311, § 1; Laws, 2008, ch. 522, § 1, eff from and after July 1, 2008.**

**Amendment Notes** — The 2006 amendment deleted former (6), which contained a July 1, 2006, repealer for the section.

The 2008 amendment inserted all references to "Pearl River Valley Water Supply District Patrol"; and made a minor stylistic change.

## § 63-9-33. Assessment of additional surcharge on traffic violations and vehicular parking or registration offenses by certain municipalities to fund computerized crime prevention measures.

In addition to any other monetary penalties and other penalties imposed by law, any municipality having a population of fifteen thousand (15,000) or more according to the most recent federal decennial census may assess an additional surcharge in an amount not to exceed One Dollar ($1.00) for each violation of Title 63 and offenses related to vehicular parking or registration. The proceeds from the surcharge shall be dedicated to the use of the municipal police department and used solely to offset the cost of implementation of certain computerized crime prevention measures and the equipment necessary therefor.

**SOURCES: Laws, 2007, ch. 465, § 1, eff from and after July 1, 2007.**

**Editor's Note** — Laws of 2007, ch. 465, § 2 provides:

"SECTION 2. This act shall be codified in Chapter 9, Title 63, Mississippi Code of 1972, relating to traffic violations procedure."

## § 63-9-35. Certain traffic citations issued in other states are prohibited from being placed on a driver's record or reported to insurance.

(1) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be placed on the person's driving record in this state.

(2) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be reported to an insurance company for insurance purposes.

(3) For the purposes of this section, 'automated traffic law enforcement system' means a camera, optical device or other equipment that:

(a) Detects a traffic law violation;

(b) Records images of the license plate of a motor vehicle that is not operated in compliance with traffic laws; and

(c) Issues a citation for a traffic law violation.

**SOURCES: Laws, 2012, ch. 398, § 1, eff from and after July 1, 2012.**

## CHAPTER 11

## Implied Consent Law

SEC.



### § 63-11-5. Implied consent to chemical tests; administration of tests; warnings; form of traffic tickets, citations or affidavits; advice regarding right to request legal or medical assistance; rules and regulations.

(1) Any person who operates a motor vehicle upon the public highways, public roads and streets of this state shall be deemed to have given his consent, subject to the provisions of this chapter, to a chemical test or tests of his breath for the purpose of determining alcohol concentration. A person shall give his consent to a chemical test or tests of his breath, blood or urine for the purpose of determining the presence in his body of any other substance which would impair a person's ability to operate a motor vehicle. The test or tests shall be administered at the direction of any highway patrol officer, any sheriff or his duly commissioned deputies, any police officer in any incorporated municipality, any national park ranger, any officer of a state-supported institution of higher learning campus police force if such officer is exercising this authority in regard to a violation that occurred on campus property, or any security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law of 1978 if such officer is exercising this authority in regard to a violation that occurred within the limits of the Pearl River Valley Water Supply District, when such officer has reasonable grounds and probable cause to believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle. No such test shall be administered by any person who has not met all the educational and training requirements of the appropriate course of study prescribed by the Board on Law Enforcement Officers Standards and Training; provided, however, that sheriffs and elected chiefs of police shall be exempt from such educational and training requirement. No such tests shall be given by any officer or any agency to any person within fifteen (15) minutes of consumption of any substance by mouth.

(2) If the officer has reasonable grounds and probable cause to believe such person to have been driving a motor vehicle upon the public highways, public roads, and streets of this state while under the influence of intoxicating liquor, such officer shall inform such person that his failure to submit to such chemical test or tests of his breath shall result in the suspension of his privilege to operate a motor vehicle upon the public streets and highways of this state for a period of ninety (90) days in the event such person has not previously been convicted of a violation of Section 63-11-30, or, for a period of one (1) year in the event of any previous conviction of such person under Section 63-11-30.

(3) The traffic ticket, citation or affidavit issued to a person arrested for a violation of this chapter shall conform to the requirements of Section 63-9-21(3)(b), and, if filed electronically, shall conform to Section 63-9-21(8).

(4) Any person arrested under the provisions of this chapter shall be informed that he has the right to telephone for the purpose of requesting legal or medical assistance immediately after being booked for a violation under this chapter.

(5) The Commissioner of Public Safety and the State Crime Laboratory created pursuant to Section 45-1-17 are hereby authorized from and after the passage of this section to adopt procedures, rules and regulations, applicable to the Implied Consent Law.

**SOURCES: Codes, 1942, § 8175-09; Laws, 1971, ch. 515, § 9; Laws, 1981, ch. 491, § 1; Laws, 1983, ch. 466, § 2; Laws, 1988, ch. 568, § 1; Laws, 1991, ch. 480, § 4; Laws, 1991, ch. 577, § 1; Laws, 1992, ch. 525, § 1; Laws, 1993, ch. 354, § 1; Laws, 1996, ch. 527, § 4; Laws, 1998, ch. 551, § 1; Laws, 2012, ch. 550, § 2, eff from and after July 1, 2012.**

**Amendment Notes —** The 2012 amendment added "and, if filed electronically, shall conform to Section 63-9-21(8)" at the end of (3).

## JUDICIAL DECISIONS

5. Admissibility and sufficiency of test results.
6. Miscellaneous.

**5. Admissibility and sufficiency of test results.**

Where defendant was convicted of first offense DUI, the trial court did not err by admitting the tests results from the Intoxilizer 8000, which showed a .11 blood alcohol content; the test began 27 minutes after the observation period began, well beyond the statutorily-required 15-minute waiting period set forth in Miss. Code Ann. § 63-11-5(1), and proper procedures were followed, the administrator of the test was certified to perform the test, and the machine had been properly certified. Godbold v. Water Valley, 962 So. 2d 133 (Miss. Ct. App. 2007).

In a suit by a minor driver against a medical insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was not inadmissible under the implied consent law because the blood test was taken by a hospital and was admissible under Miss. Code. Ann. § 63-11-5. Allen v. Clarendon Nat'l Ins. Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

**6. Miscellaneous.**

Two officers smelled alcohol emanating from defendant's vehicle; he admitted that he had consumed alcohol, and he refused

to perform sobriety tests. Under the evidence, defendant was guilty of driving under the influence by virtue of the implied consent law. Havard v. State, 911 So. 2d 991 (Miss. Ct. App. 2005).

### ATTORNEY GENERAL OPINIONS

As long as a reserve officer is a duly commissioned deputy who is properly trained and certified, there is no prohibition against that officer from using the intoxilyzer to test subjects suspected of DUI. Davis, Feb. 28, 2003, A.G. Op. #03-0091.

Certain policies and procedures adopted by the State Crime Laboratory pertaining to breath alcohol testing and blood alcohol testing must be filed with the Secretary of State's Office pursuant to the Administrative Procedures Act; however, portions dealing only with internal operations need not be filed. Huggins, Oct. 24, 2003, A.G. Op. 03-0538.

There is no alternative warning an officer must give an individual stopped for suspected DUI on private property. In order to suspend an individual's driver's license for 90 days who refused an "intoxilyzer" or other chemical intoxication test under Miss. Code Ann. § 63-11-5, the prosecution must show that the vehicle was operated on the public highways, public roads and streets of Mississippi. Sweat, March 2, 2007, A.G. Op. #07-00085, 2007 Miss. AG LEXIS 79.

### RESEARCH REFERENCES

**ALR.** Admissibility and sufficiency of extrapolation evidence in DUI prosecutions. 119 A.L.R.5th 379.

## § 63-11-7. Authorization of blood test for dead or unconscious accident victims; use of test results.

### JUDICIAL DECISIONS

2. Admissibility of test results.
3. —Criminal Case.

**2. Admissibility of test results.**

**3. —Criminal Case.**

Even if state failed to comply with Miss. Code Ann. § 63-11-7, defendant's argument that the test results were therefore inadmissible was misplaced since admissibility of evidence is governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135 (Miss. 2009), writ of certiorari denied by 131 S. Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807, 79 U.S.L.W. 3196 (U.S. 2010).

### ATTORNEY GENERAL OPINIONS

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

## § 63-11-8. Testing of motor vehicle operator involved in accident resulting in death.

### JUDICIAL DECISIONS

1. In general.
2. Time for test.

**1. In general.**

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI with injury. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

**2. Time for test.**

Court did not err by denying defendant's motion to suppress her blood test results as her blood was not drawn until three hours after the accident because the evidence showed that the officer was not immediately aware that defendant was under the influence, and he was not immediately aware of her involvement in the accident. Further delay was caused by the time it took for the tow truck to arrive, the travel time to the police station, and the travel time to the hospital. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

## § 63-11-9. Administration of blood test under § 63-11-7.

### JUDICIAL DECISIONS

**1. Admissibility of test.**

Even if the State failed to comply with Miss. Code Ann. § 63-11-9 by failing to identify that the nurse who extracted defendant's blood sample was qualifed to do so, defendant's argument that the blood test results were therefore inadmissible was misplaced, since admissibility of evidence is governed by the Mississippi Rules of Evidence, not by statutory enactment. Deeds v. State, 27 So. 3d 1135 (Miss. 2009), writ of certiorari denied by 131 S. Ct. 150, 178 L. Ed. 2d 37, 2010 U.S. LEXIS 5807, 79 U.S.L.W. 3196 (U.S. 2010).

## § 63-11-13. Right of accused to have test administered by person of his choice; effect of failure to obtain additional test.

### JUDICIAL DECISIONS

**5. Illustrative cases.**

Where defendant exhibited signs of driving under the influence of intoxicating liquor, he was arrested and taken to the correctional facility where he was informed that he had the right to refuse to breathe into the intoxilyzer. The officers were not required to inform defendant that he had the right to obtain his own blood test in support of his defense under

Miss. Code Ann. § 63-11-13. Ivy v. City of Louisville, 976 So. 2d 951 (Miss. Ct. App. 2008).

## § 63-11-15. Availability of information concerning test directed by law enforcement officer to accused or his attorney.

### ATTORNEY GENERAL OPINIONS

A prosecutor or judge should use his or her judgment in deciding whether specific items requested by a defendant are within the scope of full information as intended by this section. If the information is determined to be covered by this section, and is requested by the defendant, such information should be provided to the defendant at no cost. Ringer, Feb. 13, 2004, A.G. Op. 04-0039.

This section is the only statute that addresses discovery in justice court. In that regard, this section only applies to the information concerning the intoxilyzer test taken by the defendant. Any other information sought by a defense attorney in not subject to discovery in justice court. Cobb, May 21, 2004, A.G. Op. 04-0216.

## § 63-11-17. Liability for administering test or analysis.

### ATTORNEY GENERAL OPINIONS

While the medical staff may be immune from liability, a law enforcement officer cannot require the medical staff at a hospital or other medical facility to draw blood from a defendant suspected of violating the implied consent law. However, the county may contract with medical personnel to draw blood in such circumstances. Johnson, Apr. 30, 2004, A.G. Op. 04-0183.

## § 63-11-19. Requirements as to methods of testing and qualifications of test administrators; certification of administrators; testing and certification of accuracy of methods, machines or devices.

A chemical analysis of the person's breath, blood or urine, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Crime Laboratory created pursuant to Section 45-1-17 and the Commissioner of Public Safety and performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis. The State Crime Laboratory and the Commissioner of Public Safety are authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory. The State Crime Laboratory shall not approve the permit required herein for any law enforcement officer other than a member of the State Highway Patrol, a sheriff or his deputies, a city policeman, an officer of a state-supported institution of higher learning campus police force, a security officer appointed and commissioned pursuant to the Pearl River Valley Water Supply District Security Officer Law

of 1978, a national park ranger, a national park ranger technician, a military policeman stationed at a United States military base located within this state other than a military policeman of the Army or Air National Guard or of Reserve Units of the Army, Air Force, Navy or Marine Corps, a marine law enforcement officer employed by the Department of Marine Resources, or a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks. The permit given a marine law enforcement officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7. The permit given a conservation officer shall authorize such officer to administer tests only for violations of Sections 59-23-1 through 59-23-7 and for hunting related incidents resulting in injury or death to any person by discharge of a weapon as provided under Section 49-4-31.

The State Crime Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to ensure the accuracy thereof, and shall issue its certificate to verify the accuracy of the same.

**SOURCES: Codes, 1942, § 8175-16; Laws, 1971, ch. 515, § 16; Laws, 1978, ch. 526, § 1; Laws, 1981, ch. 491, § 3; Laws, 1988, ch. 568, § 2; Laws, 1991, ch. 577, § 2; Laws, 1995, ch. 620, § 5; Laws, 1999, ch. 585, § 6; Laws, 2006, ch. 553, § 5, eff from and after July 1, 2006.**

**Amendment Notes** — The 2006 amendment, in the first paragraph, deleted "a conservation officer or" preceding "a marine law enforcement officer" in the next-to-last sentence and added the last sentence.

## JUDICIAL DECISIONS

1. In general.
2. Qualifications of administrator and methods of administration.
4. Miscellaneous.

**1. In general.**

While the State's expert was accepted as an expert in toxicology, there was no testimony that she was in any way involved in the testing of defendant's blood specimen or that she was actively involved in the production of the report and had intimate knowledge of the analyses even though she did not perform the tests first hand, and the trial court erred in admitting the test results without evidence that the expert actually performed the test or participated in its analysis; however, because overwhelming evidence was presented to the jury that defendant was intoxicated, this error was harmless. Debrow v. State, 972 So. 2d 550 (Miss. 2007).

Consistent with 36 CFR § 4.2, federal law preempts state law on the issue of intoxicated motor-vehicle operators within national park areas, and courts are not bound to follow state law, such as Miss. Code Ann. § 63-11-19, when interpreting 36 CFR § 4.23. United States v. Jackson, 470 F. Supp. 2d 654 (S.D. Miss. 2007), affirmed by 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

Forensic toxicologist provided testimony on how the gas chromatograph operated and how it was calibrated before and after each test. He also established that the machine was run in accordance with crime lab procedures; thus, defendant's claims that the trial court should not have allowed the admission of the blood test results because the result was not achieved within the methods adopted by the Mississippi Commissioner of Public Safety was without merit. Lawrence v.

State, 931 So. 2d 600 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

**2. Qualifications of administrator and methods of administration.**

Breath-test results were properly admitted in defendant's trial for vehicular manslaughter while driving under the influence because an officer who conducted the testify was certified, and the officer properly had defendant observed for 20 minutes, although the officer did not personally observe defendant for the full 20 minute period. Hudspeth v. State, 28 So. 3d 600 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Defendant's conviction for driving under the influence of alcohol, in violation of 36 CFR § 4.23 was supported by sufficient evidence where testimony showed that the Intoxilyzer machine on which defendant was tested was accurate and the tests on defendant, which showed results of .099 and .084, were properly administered; the certification requirements in Miss. Code Ann. § 63-11-19 did not apply because defendant was convicted under federal law, not Mississippi law. United States v. Jackson, 470 F. Supp. 2d 654 (S.D. Miss. 2007), affirmed by 273 Fed. Appx. 372, 2008 U.S. App. LEXIS 7811 (5th Cir. Miss. 2008).

State had to prove as part of its authenticity burden that defendant's breath test was performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis, Miss. Code Ann. § 63-11-19; the statute, however, was not a rule of evidence, so that evidence "otherwise admissible" would not be excluded because of failure to comply with the statute, especially given that the officer was subject to cross-examination on any and all matters concerning his knowledge and experience with the machine, and the State proved that the officer was certified to perform the breath test in compliance with the statute. Henley v. State, 885 So. 2d 89 (Miss. Ct. App. 2004).

**4. Miscellaneous.**

Where defendant was convicted of DUI, the Intoxilyzer machine used to determine defendant's BAC was calibrated thirteen days prior to its use, and the testing requirements of Miss. Code Ann. § 63-11-19 were satisfied. While the machine was later replaced, the court found that it was working properly when defendant was tested. Dobbins v. City of Starkville, 938 So. 2d 296 (Miss. Ct. App. 2006).

## § 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol concentrations above specified levels; penalties; granting of hardship driving privileges; concurrent running of suspensions; separate offense of endangering child by driving under influence; penalties.

(1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age

to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2)(a) Except as otherwise provided in subsection (3), upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than forty-eight (48) hours in jail , or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided. Commercial driving privileges shall be suspended as provided in Section 63-1-216.

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

(i) Continue his employment;

(ii) Continue attending school or an educational institution; or

(iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(b) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (d) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. Suspension of a commercial driver's license shall be governed by Section 63-1-216. Upon any second conviction as described in this paragraph, the court shall ascertain whether the defendant is married, and if the defendant is married shall obtain the name and address of the defendant's spouse; the clerk of the court shall submit this information to the Department of Public Safety. Further, the commissioner shall notify in writing, by certified mail, return receipt requested, the owner of the vehicle and the spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section. The owner of the vehicle and the

spouse shall be considered notified under this paragraph if the notice is deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

For any second or subsequent conviction of any person under this section, the person shall also be subject to the penalties set forth in Section 63-11-31.

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall successfully complete treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of one (1) year after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(e) Except as otherwise provided in subsection (3), any person convicted of a third or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person successfully

completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of interlock ignition devices as provided in Section 63-11-31 and consistent with the provisions therein. Such rules and regulations shall provide for the calibration of such devices and shall provide that the cost of the use of such systems shall be borne by the offender. The Department of Public Safety shall approve which vendors of such devices shall be used to furnish such systems.

(3)(a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars ($250.00); and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under subsection (2)(a) of this section if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under subsection (1) of this section, and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars ($50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any

petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

(i) Continue his employment;

(ii) Continue attending school or an educational institution; or

(iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars ($500.00) and shall have his driver's license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars ($1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum suspension imposed under this subsection shall not be reduced and no prosecutor is authorized to offer a reduction of such suspension as part of a plea bargain.

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive such license until the person reaches the age of eighteen (18) years.

(10) Suspension of driving privileges for any person convicted of violations of subsection (1) of this section shall run consecutively.

(11) The court may order the use of any ignition interlock device as provided in Section 63-11-31.

(12) A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars ($10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether such offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

**SOURCES: Laws, 1981, ch. 491, § 6; Laws, 1983, ch. 466, §§ 7, 13; Laws, 1989, ch. 565, § 1; Laws, 1991, ch. 480, § 6; Laws, 1992, ch. 500, § 1; Laws, 1994, ch. 340, § 4; Laws, 1995, ch. 540, § 1; Laws, 1996, ch. 527, § 11; Laws, 1998, ch. 505, § 2; Laws, 2000, ch. 542, § 3; Laws, 2002, ch. 367, § 1; Laws, 2004, ch. 503, § 1; Laws, 2007, ch. 438, § 1; Laws of 2012, ch. 510, § 1, eff July 1, 2012**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected references appearing in the amendments made to this section by § 1 of ch. 510, Laws of 2012. The references to "Section 63-11-30(1)" and "Section 63-11-30(2)(a)" were changed to "subsection (1) of this section" and "subsection (2)(a) of this section", respectively, throughout. The Joint Committee ratified these corrections at its August 16, 2012 meeting.

**Amendment Notes —** The 2007 amendment deleted "provided, however, in no event shall such period of suspension exceed one (1) year" from the end of the next-to-last sentence in the first paragraph of (2)(a).

The 2012 amendment substituted "63-1-216" for "63-1-83" at the end of (2)(a); and added (12).

## JUDICIAL DECISIONS

**4. Charging affidavit or indictment.**

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because the indictment clearly notified defendant of the State's allegation that he had a .08 percent alcohol content in his blood. Thus, the indictment was legally sufficient. Nelson v. State, 69 So. 3d 50 (Miss. Ct. App. 2011).

Any error that resulted from an allegedly insufficient indictment for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), was harmless because defendant had fair notice and an opportunity to prepare a defense. While the indictment did not allege a specific basis for defendant's negligence, the appellate court specifically stated that it was not making a finding of insufficiency. Regardless, any finding of insufficiency would have been harmless because discovery showed the possibility to two specific negligent acts: driving on the wrong side of the road and speeding. Taylor v. State, — So. 3d —, 2011 Miss. App. LEXIS 238 (Miss. Ct. App. Apr. 26, 2011), writ of certiorari denied by 2012 Miss. LEXIS 371 (Miss. Aug. 2, 2012).

Indictment, which was amended from four counts to one count, of aggravated DUI, Miss. Code Ann. § 63-11-30(5), was proper even though a defendant caused four deaths. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30 was not defective because it listed the incorrect municipal court address; Miss. Code Ann. § 63-9-21(3)(c) does not require that the address of the municipal court be contained on the citation. Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Citation charging defendant with driving under the influence of intoxicating liquor indicated an arraignment date, but did not indicate whether it would be a.m. or p.m.; the omission did not render the citation defective under Miss. Code Ann. § 63-9-21(3)(c). Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Fact that an older citation form was issued to defendant in a DUI case did not mean that it was insufficient just because it was not a uniform traffic ticket since the issuing municipality had obtained new tickets; moreover, the law applicable to defendant's case involving the standards for operators of commercial vehicles had not changed. Scott v. City of Booneville, 962 So. 2d 698 (Miss. Ct. App. 2007), writ of certiorari denied by 968 So. 2d 948, 2007 Miss. LEXIS 637 (Miss. 2007).

**5. Admissibility of evidence.**

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), the circuit court incorrectly applied the Porter decision. The Porter decision stood for the proposition that in a driving under the influence (DUI) per-se case, defendant could not offer evidence regarding whether or not he was under the influence which would impair his ability to drive a vehicle; the Porter decision did not hold that in a DUI-per-se case, evidence regarding the consumption of alcohol could not be introduced to prove whether or not defendant was at a certain blood alcohol concentration when he or she was driving a motor vehicle. Evans v. State, 25 So. 3d 1054 (Miss. 2010).

In a case in which defendant was convicted of violating Miss. Code Ann. § 63-11-30(1)(c), defendant could introduce evidence that her BAC was below the legal limit at the time she was driving; Porter v. State, 749 So. 2d 250 (Miss. Ct. App. 1999), which bars a defendant from introducing evidence that her alcohol consump-

tion did not impair her driving, was inapplicable. Evans v. State, 25 So. 3d 1054 (Miss. 2010).

In a case in which defendant appealed his conviction and sentence for felony driving under the influence (DUI) as a habitual offender pursuant to Miss. Code Ann. § 99-19-81, he argued unsuccessfully that the trial court erred in failing to grant his pretrial motion to suppress evidence because: (1) the police chief had no authority to stop or arrest him, (2) he never committed any offense in the chief's jurisdiction, (3) his arrest occurred when the pursuit to make the arrest began, and (4) he had not committed any felony at that time. When the police chief began his pursuit, it was not a pursuit for the purpose of making an arrest, rather, it was a pursuit to give a courtesy warning; at the time defendant was arrested at his home, he had committed the crime of felony DUI, as well as the crime of driving with a suspended license. Delker v. State, 50 So. 3d 309 (Miss. Ct. App. 2009), affirmed by 50 So. 3d 300, 2010 Miss. LEXIS 529 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(c) was inappropriate because the circuit court judgment erred in excluding evidence of defendant's alcohol consumption and the expert testimony of a doctor. The evidence was especially relevant because of the delay between the time that defendant was pulled over and the time that she was tested. Evans v. State, 25 So. 3d 1061 (Miss. Ct. App. 2008), affirmed by, remanded by 25 So. 3d 1054, 2010 Miss. LEXIS 18 (Miss. 2010).

Defendant's right to a fair trial was not violated by introducing evidence of prior DUI convictions during the guilt phase of a trial because they were an element of the crime of DUI third offense; the state was required to prove all the essential elements of the crime charged. Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Where defendant was taken to a hospital after a two-car collision, the search warrant for a blood draw was invalid because: (1) the officer who requested the search warrant falsely stated in his affidavit that defendant had (a) refused to submit to an "analysis of his breath" after having been offered an opportunity to submit, and (b) been placed under arrest for driving while under the influence, although at that time he had not yet been arrested; and (2) there were no exigent circumstances present at the hospital that would have justified a blood test since defendant was not fleeing, and the officer obviously had time to secure a warrant, albeit an invalid one. As to the admissibility of defendant's statements about having consumed several beers, made to police at the scene of the accident, defendant did not claim that he was in custody at the time, and his statements clearly had probative value, thus the trial court did not abuse its discretion in allowing the statements to be admitted into evidence despite the defendant's argument that he was disoriented, confused, and suffering from shock and retrograde amnesia when he made the statements and they were therefore not reliable. Shaw v. State, 938 So. 2d 853 (Miss. Ct. App. 2005), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 602 (Miss. 2006).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's blood alcohol results, because the warrant authorizing the blood alcohol test was valid. Inter alia, the officer observed defendant's slurred speech and staggered walk, and he noted that defendant's breath smelled of alcohol and defendant actually admitted to having drunk four beers that morning and was unable to recite the alphabet. Dove v. State, 912 So. 2d 1091 (Miss. Ct. App. 2005).

Where defendant was charged with and found guilty of felony driving under the influence of alcohol, the trial court did not err in denying defense counsel's motion to suppress evidence of defendant's prior DUI convictions because those prior arrests were elements of the crime with which defendant was charged. Moreover, the jury was given a cautionary instruction mandating that the prior DUI convictions were not to be considered as evidence against defendant. Dove v. State, 912 So. 2d 1091 (Miss. Ct. App. 2005).

In a criminal trial for a third offense of felony DUI, defendant waived his complaint that the State had failed to prove he had been convicted twice by the Tennessee courts of a violation of Mississippi law. Defendant had no objection to admission of certified abstracts of his prior convictions. Ali v. State, — So. 2d —, 2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), substituted opinion at, opinion withdrawn by 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Defendant's prior DUI convictions were properly included at his trial for felony DUI where, since prior DUI convictions were necessary elements of felony DUI, any other holding would have precluded the State from proving an essential element of the crime, and the circuit court would have breached its duty to instruct the jury on all the essential elements of the crime charged should the prior felony convictions not have been included. Ward v. State, 881 So. 2d 316 (Miss. Ct. App. 2004).

Despite the circuit court's ruling on defendant's motion in limine, the jury further heard the arresting officer's testimony about the results of the portable breath test given at the time of the traffic stop, which was erroneously admitted without a specific limiting or cautionary instruction; further, there was substantial evidence contrary to the State's case, for example, no results were obtained from the Intoxilyzer 5000 tests. In addition, defendant seemed acutely aware of the consequences of mixing alcohol with the prescription medications defendant was taking, and defendant's physician testified that the symptoms of a sudden change in glucose levels in a diabetic could have been mistaken for intoxication. Given the erroneous admission of evidence barred by the motion in limine and the limited evidence supporting the jury's verdict, reversal and remand was required. Cannon v. State, 905 So. 2d 672 (Miss. Ct. App. 2004).

**6. —Test results.**

In an aggravated driving under the influence case under Miss. Code Ann. § 63-11-30, even if the State acted in bad faith in disposing of a blood sample a week after a motion to compel its production was filed, defendant's due process rights were not violated when the trial court denied defendant's motion to dismiss the indictment and allowed the State to introduce the results from the blood analysis at trial because defendant was unable to show that the blood sample had exculpatory value that was apparent before it was destroyed where the sample was tested four times and, even giving defendant the benefit of the lowest result from the four tests, defendant's blood-alcohol level was well over the legal limit. Harness v. State, 58 So. 3d 1 (Miss. 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. '63-11-30(5) was proper because he consented to a blood sample, he never objected to the introduction of the blood-analysis evidence during the course of the testimony by a witness with the Mississippi Crime Laboratory, defendant did not object to the admission of testimony by a doctor regarding the amount of other substances found in the blood sample and the impairing effects of the other substances, defendant's objection made at trial did not state with requisite specificity the basis for the objection to the admission of the testimony, and a deputy was permitted to testify as to what he personally observed concerning defendant's written consent to the blood test. Irby v. State, — So. 3d —, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), opinion withdrawn by 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), substituted opinion at 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Proper predicate was laid for the introduction of the blood-alcohol-content test results showing that approximately two hours after the accident, a defendant had a blood-alcohol concentration of .09 percent, where the results were admitted into evidence at trial through a forensic toxicologist who tested the sample and where there was extensive testimony about the forensic toxicologist's qualifications to perform the tests and about the lab's procedures and protocols. Lepine v. State, 10 So. 3d 927 (Miss. Ct. App. 2009).

In an aggravated driving under the influence case, a denial of defendant's motion for a new trial or motion for a directed verdict was proper because the chain of

custody for a blood sample was properly shown from the testimony of those individuals who handled the samples; moreover, defendant offered no evidence of tampering or substitution of the evidence. Vaughn v. State, 972 So. 2d 56 (Miss. Ct. App. 2008).

Motion to suppress was properly denied because defendant's Fourth Amendment rights were not violated in a case involving aggravated driving under the influence because there was probable cause for a blood sample taken from defendant based on his behavior after an accident, the fact that he smelled of alcohol and marijuana, and the fact that such items were observed in his car; the blood draw also fell under the exceptions of a search incident to arrest and exigent circumstances. Therefore, the denial of defendant's motion for a new trial or motion for a directed verdict was proper. Vaughn v. State, 972 So. 2d 56 (Miss. Ct. App. 2008).

Miss. Code Ann. § 63-11-8, which mandates that a test for determining blood alcohol content be performed on the operator of any motor vehicle involved in an accident resulting in death within two hours if possible, was not applicable where defendant was charged under Miss. Code Ann. § 63-11-30(5) for aggravated DUI with injury. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

Where defendant was tried for a third offense of felony DUI, the trial court did not err in admitting into evidence the results of an Intoxilyzer 5000 breath test showing that defendant's blood alcohol level was 0.090%. The Intoxilyzer result was just one of several pieces of evidence the prosecution used to prove that defendant was "under the influence" as required by Miss. Code Ann. § 63-11-30(1)(a); an officer testified about the results of two field sobriety tests, the odor of an intoxicating beverage and the initial observation of defendant's driving. Ali v. State, — So. 2d —, 2004 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 7, 2004), substituted opinion at, opinion withdrawn by 928 So. 2d 237, 2006 Miss. App. LEXIS 336 (Miss. Ct. App. 2006).

Intoxilyzer results may be admitted into evidence if a proper foundation has been laid. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

**7. Sufficiency of evidence.**

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

Sufficient evidence supported defendant's conviction for felony driving under the influence causing death or disfigurement, in violation of Miss. Code Ann. § 63-11-30(5) (Supp. 2010), where a witness testified that the witness and the victim were standing near the side of the road when defendant, who was intoxicated, left her lane of travel, drifted left into the opposite lane, and continued to drift left off of the road, where she hit and killed the victim. Taylor v. State, — So. 3d —, 2011 Miss. App. LEXIS 238 (Miss. Ct. App. Apr. 26, 2011), writ of certiorari denied by 2012 Miss. LEXIS 371 (Miss. Aug. 2, 2012).

Substantial evidence supported defendant's conviction for driving under the influence and causing the death of another under Miss. Code Ann. § 63-11-30(5), as defendant was exceeding the speed limit, defendant did not brake before the accident, and defendant's blood-alcohol level was over the legal limit. Beecham v. State, — So. 3d —, 2010 Miss. App. LEXIS 667 (Miss. Ct. App. Dec. 14, 2010), opinion withdrawn by, substituted opinion at 2011 Miss. App. LEXIS 642 (Miss. Ct. App. Oct. 18, 2011).

Defendant's conviction for DUI maiming in violation of Miss. Code Ann. ' 63-11-30(5) was appropriate because the overwhelming weight of the evidence supported a guilty verdict. The other

driver testified that, as she drove over a hill, she saw defendant's truck in her lane driving toward her at an alarming speed, resulting in a collision; there was also testimony that defendant smelled of alcohol and although his blood sample was not positive for the presence of alcohol, it did test positive for other substances that affected one's ability to operate a motor vehicle. Irby v. State, — So. 3d —, 2010 Miss. LEXIS 423 (Miss. Aug. 12, 2010), opinion withdrawn by 2010 Miss. LEXIS 650 (Miss. Dec. 9, 2010), substituted opinion at 49 So. 3d 94, 2010 Miss. LEXIS 638 (Miss. 2010).

Defendant's conviction for DUI, first offense, in violation of Miss. Code Ann. § 63-11-30(1)(a), was supported by the evidence because the circuit court did not err in considering evidence of the smell of alcohol and the presence of beer cans in defendant's truck; defendant admitted consuming at least "a couple" of beers. Knight v. State, 14 So. 3d 76 (Miss. Ct. App. 2009).

In defendant's trial for vehicular manslaughter while driving under the influence, a jury was presented with evidence that defendant's blood-alcohol concentration was three times the legal limit; testimony was presented from an officer that defendant admitted in an interview on the night of the accident that she believed her vehicle had crossed the centerline of the road just before the collision; and evidence was presented that there was no other reasonable cause of the victim's death. Hudspeth v. State, 28 So. 3d 600 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 89 (Miss. 2010).

Evidence was sufficient to sustain defendant's conviction under Miss. Code Ann. § 63-11-30 because, based on defendant's level of hydrocodone in her system, the State's expert opined that defendant had to have been impaired at the time of the accident. The expert testified that a person could be impaired at any dosage no matter how small, but that defendant's level of hydrocodone demonstrated significant impairment. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Evidence was sufficient to convict defendant of three counts of driving under the influence of alcohol (DUI) maiming because (1) the State established that defendant consumed alcohol prior to the wreck and was drinking at the time of the wreck; (2) defendant swerved and crossed the center line immediately prior to the wreck; (3) several witnesses testified to the presence of alcohol, including beer cans and a partially consumed bottle of vodka in defendant's vehicle, and that the inside of his vehicle smelled of alcohol; and (4) four hours after the wreck, defendant's blood alcohol content was .07% Gilpatrick v. State, 991 So. 2d 130 (Miss. 2008).

Defendant's argument, in his motion for new trial and on appeal, that the verdict convicting him of felony driving under the influence was against the overwhelming weight of the evidence was without merit, because the appellate court had to accept the evidence which supported the verdict as true; the evidence included the testimony of one officer that defendant's speech was slurred and that he had poor balance, and the testimony of two other officers that his eyes were red and that he smelled of alcohol. Brooks v. State, 999 So. 2d 408 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

Evidence was sufficient for a rational jury to find defendant guilty of vehicular homicide beyond a reasonable doubt because the State presented evidence to show that defendant ran a stop sign; it was undisputed that the victim's death was a result of the collision with defendant, and defendant admitted to drinking that night. Moreover, officers discovered an open beer can on the floorboard of defendant's car, and his blood alcohol content was 0.22. Smith v. State, 981 So. 2d 1025 (Miss. Ct. App. 2008).

During a traffic stop, the officer smelled alcohol, defendant exhibited slurred speech, admitted he had been drinking, and the Breathalyzer showed that he was well above the legal limit; a second officer had to carry defendant to the patrol car. Despite conflicting testimony at trial, the evidence was sufficient to sustain defendant's conviction for driving under the

influence of intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1). Ivy v. City of Louisville, 976 So. 2d 951 (Miss. Ct. App. 2008).

There was sufficient evidence to support a verdict of guilty of driving under the influence, first offense, under Miss. Code Ann. § 63-11-30(1), because (1) a circuit court found that there was sufficient, circumstantial evidence that defendant was operating a vehicle under § 63-11-30 because defendant admitted that he was headed home; (2) the circuit court accepted an officer's testimony that he watched defendant exit the vehicle from the driver's side, that he smelled alcoholic beverages, and that defendant displayed signs of intoxication, such as his slurred speech and unsteadiness on his feet; (3) it was a reasonable inference from the evidence presented that defendant had driven the car in violation of § 63-11-30; and (4) the results of an Intoxilyzer and defendant's behavior witnessed by the officer were admitted into evidence. Stuckey v. State, 975 So. 2d 271 (Miss. Ct. App. 2008).

Evidence was sufficient to sustain a conviction for operating a motor vehicle under the influence of alcohol because, upon arriving at the scene of the accident, a witness testified that defendant was the only individual present, defendant admitted that he was the driver of the truck, and both deputies concluded that defendant was driving under the influence based upon the witness's statement, the absence of any other occupants at the scene, the presence of scattered open beer cans, and the distinct scent of alcohol on defendant's breath. Murray v. State, 967 So. 2d 1222 (Miss. 2007).

Defendant's convictions for driving under the influence of an intoxicating liquor in violation of Miss. Code Ann. § 63-11-30(1)(a), careless driving, and driving without a seatbelt were appropriate because defendant failed to raise any of the issues he complained of on appeal in his motion for a directed verdict or new trial and because the facts of the case provided sufficient evidence to convict. Jones v. State, 958 So. 2d 840 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of DUI first offense because: (1) an officer observed marijuana on defendant's clothing, noted that defendant's eyes were bloodshot, and remarked that defendant appeared to be particularly nervous; (2) the officer testified that defendant stated that he had smoked marijuana a short time before the stop; (3) although defendant testified and gave a different account of the events, the court, as the fact finder, was entitled to believe whatever testimony it found most credible; and (4) nothing about the officer's allowing defendant to drive away from the scene affected whether defendant was actually under the influence when he was stopped initially. Beal v. State, 958 So. 2d 254 (Miss. Ct. App. 2007).

Where a police officer testified that he noticed a strong smell of alcohol coming from defendant, that defendant had glazed and bloodshot eyes, and his speech was slurred, and defendant also failed field sobriety tests, the evidence was sufficient to support defendant's conviction for driving under the influence of intoxicating liquor under Miss. Code Ann. § 63-11-30(1)(a). Loveless v. City of Booneville, 958 So. 2d 230 (Miss. Ct. App. 2007).

Where defendant's blood alcohol content was over the legal limit, and while there was no eyewitness testimony that defendant in fact drove the car that hit the victim, there was sufficient circumstantial evidence to convict defendant of a DUI homicide under Miss. Code Ann. § 63-11-30(1)(c) and (5) because: (1) the early morning time and rural location of the collision allowed the jury to form a reasonable inference that defendant drove the car that hit the victim; (2) the jury could have found based on the time and location that it was unlikely that defendant would have been walking in that area; (3) the jury could have reasonably inferred that defendant was at the scene of the collision because he drove one of the two cars involved in the collision and would not have been able to leave the scene of the accident; (4) the jury could have found that defendant's proximity to the collision and his status as the sole non-emergency personnel present indicated his involvement in the collision; (5) defendant told an officer that he could not remember how the collision happened, not that he did not

know how the collision occurred; (6) defendant never mentioned anyone else who could have possibly been driving; and (7) pursuant to Miss. R. Evid. 701, the officer testified that he concluded that defendant was driving based on his presence, the presence of emergency responders, and common sense. Travis v. State, 972 So. 2d 674 (Miss. Ct. App. 2007), writ of certiorari denied by 973 So. 2d 244, 2008 Miss. LEXIS 1 (Miss. 2008).

Miss. Code Ann. § 63-11-30(2)(c) requires that the state prove that the first and second offenses were "committed" within five years of the third offense, and the only way to establish this fact is for the state to introduce evidence of the date the first and second offenses were committed; evidence of only the conviction, which does not also contain the date the offense was committed, is not sufficient. Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Because the state did not prove the date of offense for a prior DUI charge, a conviction for felony third offense DUI was not supported by the evidence since there was no proof that two prior convictions were committed within five years of the third offense; however, a remand was appropriate for sentencing under Miss. Code Ann. § 63-11-30(2)(b) since it was undisputed that defendant had violated § 63-11-30(1). Smith v. State, 950 So. 2d 1056 (Miss. Ct. App. 2007).

Trial court did not err in denying defendant's motion for a new trial after he was convicted of third offense felony driving under the influence, in violation of Miss. Code Ann. § 63-11-30(1)(a)(c), where a reasonable juror could have found defendant guilty based on the evidence presented; the arresting officers testified that they observed defendant unsteady on his feet, with red, watery eyes, a dazed stare, and slurred speech. Starkey v. State, 941 So. 2d 899 (Miss. Ct. App. 2006).

Defendant's motion for a new trial was properly denied where the state presented sufficient evidence from which a jury could reasonably conclude that he was under the influence of intoxicating liquor to the degree that his motor skills necessary to properly operate a vehicle were impaired; under Miss. Code Ann. § 63-11-30(1)(a) and (b), the state was not required to prove that he had a certain blood-alcohol content. Bates v. State, 950 So. 2d 220 (Miss. Ct. App. 2006).

Defendant's motion for a new trial on his driving under the influence charge was properly denied because a trooper's testimony, defendant's intoxilyzer test, and a uniform traffic ticket revealed that defendant registered a breath-alcohol content of 0.13 percent. McLendon v. State, 945 So. 2d 372 (Miss. 2006), writ of certiorari denied by 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338, 75 U.S.L.W. 3694 (2007).

Defendant's motion for judgment notwithstanding the verdict was properly denied because there was legally sufficient evidence for the trial court to find defendant guilty of DUI; it was established that defendant had a breath-alcohol content of 0.13 percent through the testimony of an officer, a printout from a completed intoxilyzer test, and a uniform traffic ticket. McLendon v. State, 945 So. 2d 372 (Miss. 2006), writ of certiorari denied by 551 U.S. 1145, 127 S. Ct. 3008, 168 L. Ed. 2d 727, 2007 U.S. LEXIS 8338, 75 U.S.L.W. 3694 (2007).

There was sufficient evidence for a driving under the influence conviction, even though there was no scientific evidence of intoxication because an officer's testimony regarding defendant's conduct, as well as the reading on a breath test and his refusal to cooperate with an Intoxilyzer test, showed that he was intoxicated; the officer did not have qualify as an expert to so testify. Ouzts v. State, 947 So. 2d 1005 (Miss. Ct. App. 2006).

Evidence was sufficient to support defendant's conviction for a third offense for DUI in violation of Miss. Code Ann. § 63-11-30(1) because several witnesses saw defendant in an intoxicated state, an officer observed defendant driving, defendant refused the breath test and defendant had two previous DUI convictions. McCool v. State, 930 So. 2d 465 (Miss. Ct. App. 2006).

Appellate court affirmed defendant's conviction in violation of Miss. Code Ann. § 63-11-30 because an officer was not required to read defendant his Miranda rights when the officer first started speak-

ing to defendant about an accident as defendant was not in custody at that time, and defendant's blood alcohol level was .108. Levine v. City of Louisville, 924 So. 2d 643 (Miss. Ct. App. 2006).

Defendant's conviction for driving under the influence pursuant to Miss. Code Ann. § 63-11-30(1)(a) was affirmed, even though the Intoxilyzer results were suppressed, as the officer's testimony regarding defendant's erratic driving, smell of alcohol, and the failure of sobriety tests was sufficient to convict defendant. Further, it was irrelevant that defendant was initially charged under § 63-11-30(1)(c) as both subsections (1)(a) and (1)(c) charged defendant with the same crime. Deloach v. City of Starkville, 911 So. 2d 1014 (Miss. Ct. App. 2005).

Evidence was sufficient to convict defendant under Miss. Code Ann. § 63-11-30(1) where there was no evidence that anyone but defendant had been driving the van and defendant admitted to the officer that he had been drinking and had consumed Xanax pills within the previous 24 hours, which impaired his ability to operate the van; the verdict was not against the overwhelming weight of the evidence. Turner v. State, 910 So. 2d 598 (Miss. Ct. App. 2005).

Verdict finding defendant guilty of DUI manslaughter under Miss. Code Ann. § 63-11-30 was not against the weight of the evidence where investigating officers at the accident scene testified to statements that defendant made about how much alcohol he had consumed before the accident; photographs of the accident scene showed that there were empty beer cans inside defendant's truck and all around the site of the accident; other photographs also showed an unopened six pack of beer inside defendant's truck; and officers testified that the unopened six pack was cold, and, therefore, very likely purchased close in time to the accident. Testimony of the officers also showed that there was a trail of empty beer cans leading from the point where defendant's truck started to flip to the point where it landed. Cowart v. State, 910 So. 2d 726 (Miss. Ct. App. — 2005).

Verdict of felony DUI, third offense, was consistent with the weight of the evidence where defendant was observed driving south in a northbound lane and after being stopped defendant asked to talk to a particular officer for help with that DUI. In addition, three officers testified to the alcohol on defendant's breath and his bloodshot eyes and a doctor, on cross-examination, refuted the possibility that hypoglycemia could have caused the odor of alcohol on defendant's breath. Cannon v. State, 904 So. 2d 155 (Miss. 2005).

In a prosecution of defendant for vehicular homicide, there was sufficient evidence that defendant was driving a truck at the time of an accident in which his girlfriend's son was killed, even though no witnesses saw defendant driving; defendant's girlfriend testified that defendant emphatically refused to allow her son to drive the truck, and the girlfriend witnessed defendant approach the driver's side and her son approach the passenger's side. Dunaway v. State, 919 So. 2d 67 (Miss. Ct. App. 2005), writ of certiorari dismissed en banc by 920 So. 2d 1008, 2005 Miss. LEXIS 652 (Miss. 2005), writ of certiorari denied by 921 So. 2d 1279, 2006 Miss. LEXIS 35 (Miss. 2006).

Record showed that the officer found defendant slumped over the steering wheel with the motor running and that when defendant finally woke up, he was disoriented. Similarly, the officer testified that he could smell a strong odor of alcohol emanating from defendant, that defendant staggered, was very incoherent and admitted to having consumed three beers; even without the breath test, which defendant refused, there was ample evidence to support defendant's conviction for driving under the influence and defendant's motion for judgment notwithstanding the verdict was properly denied. McDonald v. City of Aberdeen, 906 So. 2d 774 (Miss. Ct. App. 2004).

Defendant was properly convicted of DUI based on a breathalyzer test given to him during a traffic stop indicating an alcohol content of .151. The trial court was permitted to enhance his punishment based on his prior DUI convictions. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant of driving under the influence, first

offense, where defendant exhibited signs of intoxication in front of a police officer, the intoxilyzer test was positive for alcohol consumption, and defendant, at the station, refused on two occasions to give a breath sample for analysis by an intoxilyzer machine. Knight v. City of Aberdeen, 881 So. 2d 926 (Miss. Ct. App. 2004).

**7.5. Instructions to jury.**

In a felony driving under the influence (DUI) case, defendant was not entitled to a jury instruction that it was not illegal to drink and drive, because the jury was properly instructed as to the elements of felony DUI and the level of proof required, and there was no evidentiary basis for the instruction, as defendant did not testify at trial that he had not consumed enough alcohol to be considered under the influence; he denied that he had consumed any alcohol on the day of his arrest. Brooks v. State, 999 So. 2d 408 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 852, 2009 Miss. LEXIS 48 (Miss. 2009).

In a criminal trial, the jury was properly instructed that the elements required to prove the offense of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) were: (1) defendant was operating a motor vehicle, (2) defendant was under the influence of intoxicating liquor, and (3) defendant had two prior DUI convictions within the past 5 years. Defendant was not entitled to a jury instruction that the alcohol intoxication impaired his ability to operate the vehicle. Heidelberg v. State, 976 So. 2d 948 (Miss. Ct. App. 2007).

Where jury instructions did not mention defendant's being under the influence but instead provided that conviction was permitted if defendant did "negligently operate a motor vehicle while having .08% or more blood alcohol by weight volume," the instruction properly reflected the statutory standard for driving under the influence as set forth in Miss. Code Ann. § 63-11-30(1). Sumrall v. State, 955 So. 2d 332 (Miss. Ct. App. 2006), writ of certiorari denied by 949 So. 2d 37, 2007 Miss. LEXIS 137 (Miss. 2007).

Where defendant was tried for one count of negligent operation of a motor vehicle while under the influence of intoxicating liquors, aggravated assault for his injury of the driver, and five counts of manslaughter by culpable negligence for the deaths of five passengers, he was not entitled to an instruction that aggravated operation of a vehicle while under the influence (DUI), set out in Miss. Code Ann. § 63-11-30, was a lesser-included offense of manslaughter by culpable negligence. Lawrence v. State, 931 So. 2d 600 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 345 (Miss. 2006).

**8. Double jeopardy.**

Defendant's double jeopardy rights were not violated by her convictions for three counts of driving under the influence and negligently causing death because the State was not required to specifically list the substance or substances that defendant allegedly was driving under the influence of at the time of the accident. Defendant was only convicted of one count of driving under the influence of hydrocodone and negligently causing the death or injury of another for each death or injury so caused. Teston v. State, 44 So. 3d 977 (Miss. Ct. App. 2008), writ of certiorari dismissed by 44 So. 3d 969, 2010 Miss. LEXIS 520 (Miss. 2010).

Appellant's conviction for DUI manslaughter and two counts of DUI mayhem in violation of Miss. Code Ann. § 63-11-30 did not subject him to double jeopardy. Each of the counts were predicated upon separate felonies, one instance of manslaughter and two instances of mutilation or mayhem that appellant committed as a result of his drunk driving. Moreno v. State, 967 So. 2d 701 (Miss. Ct. App. 2007).

Denial of the inmate's petition for post-conviction relief was proper where double jeopardy protection was not implicated because Miss. Code Ann. § 63-11-30(5) required an element not required by Miss. Code Ann. § 97-3-47, namely, that of intoxication. Ramage v. State, 914 So. 2d 274 (Miss. Ct. App. 2005).

Each offense is separate and distinct in cases of felony DUI enhancement and does not violate the constitutional right against double jeopardy. Use of defendant's prior DUI convictions could be used to enhance punishment for his subsequent conviction without violating double jeop-

ardy. McLaurin v. State, 882 So. 2d 268 (Miss. Ct. App. 2004).

**9. Sentencing.**

Trial court properly did not make a finding that defendant was a violent offender under Miss. Code Ann. § 47-5-1003 when defendant was convicted of driving under the influence under Miss. Code Ann. § 63-11-30(5) because § 47-5-1003 does not require the trial court to make an on the record determination that the accused is a violent offender, and further, aggravated DUI does not fall within either of the excluded categories of § 47-5-1003. Smith v. State, 942 So. 2d 308 (Miss. Ct. App. 2006).

Defendant received two separate sentences for two separate offenses; that one followed immediately after the other is one of the costs of committing more than one felony DUI offense, but the statutory maximum was not exceeded on either separate offense. Burns v. State, 933 So. 2d 329 (Miss. Ct. App. 2006).

Petitioner was properly denied postconviction relief after he pled guilty to manslaughter by culpable negligence because the maximum sentence for the crime under Miss. Code Ann. § 63-11-30(4) was 25 years, and petitioner was only sentenced to 20 years in prison, with 14 years suspended. Petitioner failed to show good cause or prejudice. Oaks v. State, 912 So. 2d 1075 (Miss. Ct. App. 2005).

Trial court did not err in admitting the abstract of defendant's first of two DUI convictions in Georgia and considering it for enhancement purposes in the sentencing phase for defendant's conviction of his third DUI offense because in Mississippi prior convictions are necessary elements of the crime of felony DUI under Miss. Code Ann. § 63-11-30, not merely sentence enhancement factors. Also defendant failed to introduce any evidence to show that his first DUI conviction was in fact uncounseled and resulted in jail time. Watkins v. State, 910 So. 2d 591 (Miss. Ct. App. 2005).

**10. Miscellaneous.**

In an adversary proceeding in which an insurance company sued a voluntary Chapter 7 debtor, asserting that he was indebted to the insurance company as the insured's subrogee in the amount of $50,000.00 and the insurance company filed an unopposed motion for summary judgment on the issue of non-dischargeability, it had proved by a preponderance of the evidence the existence of debt for personal injury to its insured caused by the debtor's operation of a motor vehicle unlawfully under state law due to his intoxication, in violation of Miss. Code Ann. § 63-11-30. Cincinnati Ins. Co. v. Deeds (In re Deeds), — Bankr. —, 2010 Bankr. LEXIS 2809 (Bankr. N.D. Miss. Sept. 1, 2010).

Where an officer conducted a traffic stop, he detected the odor of alcohol coming from the vehicle and noticed that defendant had bloodshot eyes and slurred speech; defendant refused to take the Intoxilyzer 5000 test. Defendant was properly convicted of felony driving under the influence (DUI) in violation of Miss. Code Ann. § 63-11-30(1) based on two prior DUI convictions within 5 years. Heidelberg v. State, 976 So. 2d 948 (Miss. Ct. App. 2007).

Allowing the verdict against defendant to stand would not be an unconscionable injustice where the police officer testified that defendant and his brother had switched places in the car, and his testimony was corroborated by the deputy and an unnamed eyewitness; the act of switching drivers was an indication to the jury that defendant was aware of his intoxicated condition and sought to conceal it from the police, and any claim that defendant's brother was driving at all pertinent times that night was properly considered and resolved by the jury. Ward v. State, 881 So. 2d 316 (Miss. Ct. App. 2004).

Court affirmed the circuit court's decision affirming defendant's conviction under Miss. Code Ann. § 63-11-30(1)(c); while the prosecution violated Miss. Unif. Cir. & County Ct. Prac. R. 9.04 by not providing the documents defendant requested, including the breath test instrument manuals, or by instead filing an objection with the trial court, the requested manuals would not have changed the outcome of the and the discovery error was harmless. Wyatt v. City of Pearl, 876 So. 2d 281 (Miss. 2004).

**10.5. Prior convictions.**

Defendant's conviction for his third DUI offense within five years, under Miss. Code Ann. § 63-11-30(2)(c), was appropriate because, even though the abstract of defendant's prior conviction did not include the date of arrest, a reasonable juror could have inferred that the date of arrest for the DUI was the same date that the offense occurred. Nelson v. State, 69 So. 3d 50 (Miss. Ct. App. 2011).

**11. Appeals.**

Because defendant did not post the necessary bond pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 12.02(A) and he did not file a motion seeking to cure his deficient appeal, his appeal from a municipal court's judgment accepting his guilty plea to driving under the influence was properly dismissed . Hill v. City of Wiggins, 984 So. 2d 1086 (Miss. Ct. App. 2008).

## ATTORNEY GENERAL OPINIONS

Section 63-11-30(2)(c) provides for the forfeiture of a vehicle upon the conviction of a defendant for a third offense DUI; there is no provision for forfeiture of a vehicle upon a second offense DUI conviction. Johnston, Jan. 10, 2003, A.G. Op. #02-0762.

A minor who has had a DUI non-adjudicated may not have a subsequent DUI offense non-adjudicated. Livingston, July 7, 2003, A.G. Op. 03-0311.

A defendant convicted of DUI second offense would not receive credit against the mandatory five days of imprisonment for time spent at an inpatient treatment facility. Zebert, June 21, 2004, A.G. Op. 04-0246.

The authority of a municipal or justice court to grant a hardship privilege does not apply to anyone who does not qualify for the provisions of the Zero Tolerance for Minors Act. Nowak, July 23, 2004, A.G. Op. 04-0325.

An individual seeking a hardship privilege in municipal of justice court must file a petition with the municipal or justice court and pay the clerk of the municipal or justice court a fee of $ 50.00 to be deposited into the state general fund for substance abuse treatment and education. Nowak, July 23, 2004, A.G. Op. 04-0325.

The fact that a driver apprehended driving a motor vehicle while under the influence of a drug or controlled substance has a valid prescription is a defense to a prosecution under 63-11-30(1)(d); however, it would be a violation of Section 63-11-30 (1)(b) regardless of the existence of a prescription if the person's driving ability was impaired. Mitchell, Feb. 3, 2006, A.G. Op. 05-0188.

## RESEARCH REFERENCES

**ALR.** Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs. 17 A.L.R.6th 757.

# § 63-11-31. Impoundment or immobilization of all vehicles registered to person convicted of DUI; installation of ignition interlock system.

## RESEARCH REFERENCES

**ALR.** Validity, construction, and application of ignition interlock laws. 15 A.L.R.6th 375.

## § 63-11-39. Reduction of charges under chapter.

### ATTORNEY GENERAL OPINIONS

Amending a charge of violation of § 63-11-40 to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

## § 63-11-40. Driving while driving license or privilege cancelled, suspended or revoked.

### ATTORNEY GENERAL OPINIONS

Amending a charge of violation of this section to a violation of § 63-1-57 when the facts of the case do not merit such an amendment would constitute a violation of § 63-11-39 this section. Mitchell, Aug. 27, 2004, A.G. Op. 04-0435.

## § 63-11-41. Admissibility in criminal prosecution of evidence of refusal to submit to chemical test.

### JUDICIAL DECISIONS

1. In general.
2. Constitutionality.

**1. In general.**

Evidence was sufficient to support defendant's conviction for common law DUI under Miss. Code Ann. § 63-11-30(1)(a) (Rev. 2004) as it showed that defendant admitted to the officer who stopped his vehicle that he had drunk two beers while he was driving, that he also admitted that he had drunk liquor and beer earlier in the day, that the officer smelled a strong odor of alcohol coming from defendant and observed defendant's glassy eyes, and that defendant refused to field sobriety test and the chemical test. Evidence that defendant refused the chemical test was admissible pursuant to Miss. Code Ann. § 63-11-41 (Rev. 2004) and Miss. R. Evid. 402. Ellis v. State, 77 So. 3d 1119 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 78 So. 3d 906, 2012 Miss. LEXIS 25 (Miss. 2012).

During defendant's trial for DUI, the court did not err in considering defendant's refusal to submit to a breathalyzer test because the evidence was admissible under the statute and relevant. Knight v. State, 14 So. 3d 76 (Miss. Ct. App. 2009).

**2. Constitutionality.**

During defendant's trial for felony DUI, third offense, the admittance of defendant's refusal to submit to a breath test was not a violation of his right against self-incrimination under either Miss. Const. Art. 3, § 26 or USCS Const. Amend. 5; thus, defendant's challenge to the constitutionality of Miss. Code Ann. § 63-11-41 failed. Starkey v. State, 941 So. 2d 899 (Miss. Ct. App. 2006).

## § 63-11-45. Denial of insurance coverage on ground of refusal to submit to test or upon basis of test results.

### JUDICIAL DECISIONS

**1. In general.**

In a suit by a minor driver against a insurer seeking coverage for injuries suffered in a one-car accident, the minor's excessive blood alcohol level was admissible because the blood was tested by a

hospital, not by a police officer; its admission did not violate Miss. Code Ann. § 63-11-45 because the test did not fall within the implied consent law. Allen v. Clarendon Nat'l Ins. Co., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64602 (S.D. Miss. Sept. 8, 2006).

## § 63-11-49. Authorization for impoundment and forfeiture of vehicle seized under chapter; notice of intention to forfeit; forfeiture to spouse; request for judicial review.

### ATTORNEY GENERAL OPINIONS

If a vehicle is titled jointly in the name of the defendant and the spouse, and the spouse shows that the vehicle is the only source of transportation, the vehicle shall be forfeited to the spouse; however, if the vehicle is titled jointly to the defendant and someone other than the spouse, the vehicle may be forfeited subject to the interested party seeking a judicial review of the seizure and proposed forfeiture and it would then be within the discretion of a court with competent jurisdiction to determine whether the vehicle should be forfeited. Johnston, Jan. 10, 2003, A.G. Op. #02-0762.

## § 63-11-51. Institution of forfeiture proceedings; filing and service of petition for forfeiture.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## § 63-11-53. Disposition of forfeited vehicles; disposition of money derived from forfeited vehicles.

**Editor's Note** — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

# CHAPTER 13

# Inspection of Motor Vehicles

Sec.

## § 63-13-8. Grace period for obtaining valid inspection sticker; dismissal of charge of violating inspection law where defendant presents receipt showing vehicle inspection and valid inspection sticker prior to hearing date or date fine is due.

(1) A grace period for obtaining a valid inspection sticker, according to the provisions of Chapter 13, Title 63, Mississippi Code of 1972, shall be granted in the following situations:

(a) Whenever a motor vehicle inspection sticker expires on a legal holiday or on a weekend, the owner of the vehicle involved shall have a grace period of three (3) days in which to obtain a valid inspection sticker.

(b) Whenever a motor vehicle inspection sticker expires while the vehicle is being repaired or restored, the owner of the vehicle involved shall have a grace period of three (3) days in which to obtain a valid inspection sticker. The period of three (3) days shall start to run from the date the owner takes possession of the vehicle after said expiration date.

(2) If the operator of a vehicle charged with a violation of this chapter for failure to have a valid vehicle inspection sticker presents to the court on or before the hearing date or the date of payment of the fine a receipt or other proof sufficient to show that the vehicle has been inspected and a valid inspection sticker issued for the vehicle, no fine, fee, penalty, assessment or court costs shall be imposed and the charge shall be dismissed.

**SOURCES: Laws, 1977, ch. 317, § 1; Laws, 2005, ch. 328, § 3, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment added (2).

## § 63-13-9. Details of inspection; inspection of certain vehicles by representative of Liquified Compressed Gas Board; suspension of registration of unsafe vehicles.

Such inspections shall be made of every such vehicle, and such certificates shall be obtained with respect to the mechanism, lights, tires, brakes and equipment, including a test to determine the luminous reflectance and light transmittance of the windows of vehicles that have been tinted or darkened after factory delivery, as shall be designated by the motor vehicle inspection department by rules and regulations.

No vehicle equipped with a liquefied petroleum or natural gas carburetion system may be issued a certificate under this chapter unless the vehicle shall have first been inspected and approved by an inspector or qualified installer authorized by the State Liquefied Compressed Gas Board to inspect and approve the installation of such systems, and unless such approval is exhibited to the person making the actual inspection under this chapter.

The Commissioner of Public Safety may suspend the registration of any vehicle which he determines is in such unsafe condition as to constitute a menace to safety and which, after notice and demand, is not equipped as

required in this chapter and for which a required certificate has not been obtained.

**SOURCES: Codes, 1942, § 8258-05; Laws, 1960, ch. 408, § 5; Laws, 1964, ch. 456; Laws, 1968, ch. 544, § 1; Laws, 1982, ch. 437, § 7; Laws, 1995, ch. 475, § 22; Laws, 2005, ch. 328, § 2, eff from and after July 1, 2005.**

**Amendment Notes —** The 2005 amendment inserted "including a test to determine the luminous reflectance and light transmittance of the windows of vehicles that have been tinted or darkened after factory delivery" in the first paragraph.

## CHAPTER 15

## Motor Vehicle Safety — Responsibility

SEC.



## § 63-15-1. Short title.

### ATTORNEY GENERAL OPINIONS

A county is authorized under statutes governing general jurisdiction over roads to acquire right-of-way for and construct sidewalks along county roads as part of the county road system utilizing road and bridge funds if the board of supervisors determines, as reflected by an order entered upon its minutes, that such is necessary and convenient for the use of the traveling public. Hollimon, June 4, 2004, A.G. Op. 03-0616.

## § 63-15-3. Definitions.

The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Highway" means the entire width between property lines of any road, street, way, thoroughfare or bridge in the State of Mississippi not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the state has legislative jurisdiction under its police power.

(b) "Judgment" means any judgment which shall have become final by expiration, without appeal, of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of

action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(c) "Motor vehicle" means every self-propelled vehicle (other than traction engines, road rollers and graders, tractor cranes, power shovels, well drillers, implements of husbandry and electric personal assistive mobility device as defined in Section 63-3-103) which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

For purposes of this definition, "implements of husbandry" shall not include trucks, pickup trucks, trailers and semitrailers designed for use with such trucks and pickup trucks.

(d) "License" means any driver's, operator's, commercial operator's, or chauffeur's license, temporary instruction permit or temporary license, or restricted license, issued under the laws of the State of Mississippi pertaining to the licensing of persons to operate motor vehicles.

(e) "Nonresident" means every person who is not a resident of the State of Mississippi.

(f) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of Mississippi pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in the State of Mississippi.

(g) "Operator" means every person who is in actual physical control of a motor vehicle.

(h) "Owner" means a person who holds the legal title of a motor vehicle; in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(i) "Person" means every natural person, firm, copartnership, association or corporation.

(j) "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person in any one (1) accident, and subject to said limit for one (1) person, in the amount of Fifty Thousand Dollars ($50,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of Twenty-five Thousand Dollars ($25,000.00) because of injury to or destruction of property of others in any one (1) accident.

(k) "Registration" means a certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

(*l*) "Department" means the Department of Public Safety of the State of Mississippi, acting directly or through its authorized officers and agents, except in such sections of this chapter in which some other state department is specifically named.

(m) "State" means any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

**SOURCES: Codes, 1942, § 8285-01; Laws, 1952, ch. 359, § 1; Laws, 1972, ch. 349, § 1; Laws, 2003, ch. 485, § 11; Laws, 2005, ch. 483, § 1, eff from and after Jan. 1, 2006.**

**Amendment Notes** — The 2005 amendment, effective and in force from and after January 1, 2006, and applicable to policies issued or renewed on or after that date, in (j), substituted "Twenty-five Thousand Dollars ($25,000.00)" for "Ten Thousand Dollars ($10,000.00)," "Fifty Thousand Dollars ($50,000.00)" for "Twenty Thousand Dollars ($20,000.00)," and "Twenty-five Thousand Dollars ($25,000.00)" for "Five Thousand Dollars ($5,000.00)."

JUDICIAL DECISIONS

**1. In general.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

Defendant was not entitled to relief from the fine imposed for his conviction in violation of Miss. Code Ann. § 63-15-4(4) for failing to have motor vehicle liability insurance at the time of a traffic stop, as there was no evidence in the record that defendant ever presented anyone with proof of insurance. Nunn v. State, 918 So. 2d 79 (Miss. Ct. App. 2006).

At the time of the decedents' accident, there was absolutely no evidence to suggest that the Mississippi Department of Transportation (MDOT) vehicle was in transit or was involved in any mode of transportation, that an MDOT employee was behind the steering wheel, that the vehicle's engine was running, or that an MDOT employee was driving or using the vehicle for any purpose related or incident to transportation; the vehicle was stationary and off the roadway while the bucket was used to attempt to push the tree down and the vehicle's purpose, at the time in question, was to allow the MDOT employees to maneuver the equipment permanently attached, i.e., the lift platform, for purposes unrelated to transportation services; therefore, there was insufficient evidence for the jury to conclude that the accident arose from the use of the MDOT vehicle. Alfa Ins. Corp. v. Ryals, 918 So. 2d 1260 (Miss. 2005).

## § 63-15-4. Insurance card; exemptions; card to be kept in vehicle; insurance company to provide; penalty.

(1) The following vehicles are exempted from the requirements of this section:

(a) Motor vehicles exempted by Section 63-15-5;

(b) Motor vehicles for which a bond or a certificate of deposit of money or securities in at least the minimum amounts required for proof of financial responsibility is on file with the department;

(c) Motor vehicles that are self-insured under Section 63-15-53; and

(d) Implements of husbandry.

(2)(a) Every motor vehicle operated in this state shall have an insurance card maintained in the motor vehicle as proof of liability insurance that is in compliance with the liability limits required by Section 63-15-3(j). The insured parties shall be responsible for maintaining the insurance card in each motor vehicle.

(b) An insurance company issuing a policy of motor vehicle liability insurance as required by this section shall furnish to the insured an insurance card for each motor vehicle at the time the insurance policy becomes effective. Beginning on July 1, 2013, insurers shall furnish commercial auto coverage customers with an insurance card clearly marked with the identifier, "Commercial Auto Insurance" or "Fleet" or similar language, to reflect that the vehicle is insured under a commercial auto policy.

(3) Upon stopping a motor vehicle at a roadblock where all passing motorists are checked as a method to enforce traffic laws or upon stopping a motor vehicle for any other statutory violation, a law enforcement officer, who is authorized to issue traffic citations, shall verify that the insurance card required by this section is in the motor vehicle. However, no driver shall be stopped or detained solely for the purpose of verifying that an insurance card is in the motor vehicle unless the stop is part of such roadblock. If the law enforcement officer uses the verification system created in Section 63-16-3 and receives a response from the system verifying that the owner of the motor vehicle has liability insurance in the amounts required under Section 63-15-3(j), then the officer shall not issue a citation under this section notwithstanding any failure to display an insurance card by the owner or operator.

(4) Failure of the owner or the operator of a motor vehicle to have the insurance card in the motor vehicle is a misdemeanor and, upon conviction, is punishable by a fine of Five Hundred Dollars ($500.00) and suspension of driving privilege for a period of one (1) year or until the owner of the motor vehicle shows proof of liability insurance that is in compliance with the liability limits required by Section 63-15-3(j). Fraudulent use of an insurance card shall be punishable in accordance with Section 97-7-10. The funds from such fines shall be deposited in the State General Fund in the State Treasury. However, if such fines are levied in a municipal court, fifty percent (50%) of the funds from such fines shall be deposited in the general fund of the municipality. If such fines are levied in any of the courts of the county, fifty percent (50%) of the funds from such fines shall be deposited in the general fund of the county. A person convicted of a criminal offense under this subsection (4) shall not be convicted of a civil violation under Section 63-16-13(1) of this act arising from the same incident.

(5) If, at the hearing date or the date of payment of the fine, the motor vehicle owner shows proof of motor vehicle liability insurance in the amounts required by Section 63-15-3(j), the fine shall be reduced to One Hundred Dollars ($100.00). If the owner shows proof that such insurance was in effect at the time of citation, the case shall be dismissed as to the defendant with prejudice and all court costs shall be waived against the defendant.

**SOURCES: Laws, 2000, ch. 302, § 1; Laws, 2005, ch. 483, § 5; Laws, 2005, ch. 498, § 1; Laws, 2008, ch. 487, § 1; Laws, 2012, ch. 504, § 8, eff from and after July 1, 2012.**

**Joint Legislative Committee Note —** Section 5 of ch. 483 Laws of 2005, effective from and after July 1, 2005 (approved April 4, 2005), amended this section. Section 1 of ch. 498, Laws of 2005, effective from and after July 1, 2005 (approved April 21, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 498, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

**Amendment Notes —** The first 2005 amendment (ch. 483) added the last two sentences of (4).

The second 2005 amendment (ch. 498) in (3), inserted "at a roadblock where all passing motorists are checked as a method to enforce traffic laws or upon stopping a motor vehicle" in the first sentence, and added "unless the stop is part of such roadblock" in the last sentence; in (4), substituted "Five Hundred Dollars ($500.00)" for "One Thousand Dollars ($1,000.00)" in the first sentence, and added the last two sentences; and rewrote the last sentence in (5).

The 2008 amendment substituted "fifty percent (50%)" for "twenty-five percent (25%)" twice in (4).

The 2012 amendment added "motor" preceding "vehicle" throughout the section; and added the last sentences in (2)(b), (3) and (4).

**Cross References —** Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

.5. In general.
1. Responsibility for providing insurance.
2. Fines.

**.5. In general.**

Miss. Const. Art. 3, § 23, was not violated by detaining defendant briefly after a traffic stop; once he stopped defendant's vehicle, the deputy was required to ensure that defendant's temporary license plate was valid and that defendant had liability insurance, pursuant to Miss. Code Ann. § 63-15-4(3). Wade v. State, 33 So. 3d 498 (Miss. Ct. App. 2009).

**1. Responsibility for providing insurance.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

Insurer for a rental car company was primary insurer on rental car that was involved in an accident and was not relieved of its obligation to provide insurance simply because the renter also had liability insurance, as Miss. Code Ann. § 63-15-4(2) placed the responsibility of maintaining insurance on the party that had an insurable interest in the property, which in this case was the rental car company. Universal Underwriters Group, Inc. v. State Farm Fire & Cas. Co., 931 So. 2d 617 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 324 (Miss. 2006).

**2. Fines.**

Defendant's conviction in violation of Miss. Code Ann. § 63-15-4(4) for failing to have motor vehicle liability insurance at the time of a traffic stop, the $1,000 fine, and the suspension of his driver's license, were all affirmed as there was no evidence in the record that defendant ever presented anyone with proof of insurance. Nunn v. State, 918 So. 2d 79 (Miss. Ct. App. 2006).

**ATTORNEY GENERAL OPINIONS**

Evidence of insurance coverage must be presented on the hearing date, or the date of payment of the fine, in order to have the fine reduced or waived. Markopoulos, Oct. 29, 2004, A.G. Op. 04-0513.

If the requirements of subsection (5) of this section are met, the fine for not showing proof of liability insurance at the time of a traffic stop shall be reduced to one hundred dollars or waived, whichever is appropriate under the statute, either on the hearing date or on the date of payment of the fine. Miller, Aug. 27, 2004, A.G. Op. 04-0432 is withdrawn. Dawson, Dec. 17, 2004, A.G. Op. 04-0578.

The "hearing date" in this section is the date on which the charge was heard by the court. The "date of payment of the fine" is the date the court, at sentencing, ordered the fine to be paid. Thus, if the owner, on either date, shows proof that he purchased liability insurance subsequent to receiving the citation the fine should be reduced to $100.00; if he, on either date, shows proof that the insurance was in effect at the time he received the citation the fine and court costs should be waived. Lawrence, Apr. 8, 2005, A.G. Op. 05-0053.

In order to have a fine reduced or waived under the terms of Section 63-15-4(5), proof of coverage must have been produced at the hearing date or the date the court ordered the fine to be paid in its sentence. Therefore, a judge has no authority to alter or reduce a fine where a defendant furnished proof that coverage was obtained after he was tried, found guilty and sentenced. Darby, May 10, 2005, A.G. Op. 05-0078.

## § 63-15-11. Requirement by department of deposit of security for damages resulting from accident generally; suspension of licenses and registrations upon failure to provide security.

(1) If twenty (20) days after the receipt of a report of a motor vehicle accident in this state which has resulted in bodily injury or death, or damage to the property of any one (1) person in excess of Two Hundred Fifty Dollars ($250.00), the department does not have on file evidence satisfactory to it that

the person who would otherwise be required to file security under subsection (2) of this section has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the department shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(2) The department shall, within sixty (60) days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in the sum so determined by the department and shall also furnish proof of financial responsibility. Notice of such suspension shall be sent by the department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security. Where erroneous information is given the department with respect to the matters set forth in paragraphs (a), (b) and (c) of subsection (4) of this section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it of correct information with respect to said matters.

(3) Any person so notified of suspension may, within ten (10) days after receipt of such notification, make a written request to the department for a hearing, and such request shall operate as a stay of any suspension pending the outcome of such hearing. For the purposes of this section, the scope of such hearing shall cover the issues of whether there is a reasonable probability of a judgment being rendered against such person in a lawsuit arising out of the accident and whether such person is exempt from the requirement of depositing security under subsection (4) of this section. At such hearing the department may also consider the amount of security required to be deposited, if any. The hearing shall be in accordance with rules and regulations which shall be adopted by the department and furnished to the operator or owner with the notice of suspension. For the purposes of this section, a "hearing" may consist of a determination of such issues by the department based solely on written reports submitted by the operator or owner and by investigatory officers, provided that the owner or operator, in his request to the department for a hearing, has expressly consented to such type hearing and that the department has consented thereto.

Any person whose suspension has been sustained shall have the right to appeal as provided in Section 63-15-7. However, such suspension shall not be stayed by the department or any court while such appeal is pending.

(4) Subsections (1) and (2) of this section shall not apply: (a) to such operator or owner if such owner had in effect at the time of such accident a liability policy with respect to the motor vehicle involved in such accident; (b)

to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a liability policy with respect to his operation of motor vehicles not owned by him; (c) to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance policy or bond of a surety company authorized to do business in this state; (d) to any person qualifying as a self-insurer under Section 63-15-53, or to any person operating a motor vehicle for such self-insurer; (e) to the operator or the owner of a motor vehicle legally parked at the time of the accident; (f) to the owner of a motor vehicle if at the time of the accident the vehicle was stolen; or (g) to any person for whom the department has found in the hearing provided for in subsection (3) of this section, that there is not a reasonable probability of a judgment being rendered against such person in a lawsuit arising out of the accident.

No such policy shall be effective under this section unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or the most recent renewal thereof, such policy shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon such policy arising out of such accident. However, every such policy shall be subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to said limit for one (1) person, to a limit of not less than Fifty Thousand Dollars ($50,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and if the accident has resulted in injury to or destruction of property, to a limit of not less than Twenty-five Thousand Dollars ($25,000.00) because of injury to or destruction of property of others in any one (1) accident.

**SOURCES: Codes, 1942, § 8285-05; Laws, 1952, ch. 359, § 5; Laws, 1960, ch. 411, § 1; Laws, 1970, ch. 487, § 1; Laws, 1972, ch. 349, § 2; Laws, 1980, ch. 488, § 1; Laws, 2005, ch. 483, § 2, eff from and after Jan. 1, 2006.**

**Amendment Notes —** The 2005 amendment, effective and in force from and after January 1, 2006, and applicable to policies issued or renewed on or after that date, substituted "paragraphs (a), (b) and (c)" for "subdivisions (1), (2), and (3)" in the last sentence of (2); redesignated former subdivisions (1) through (7) as present paragraphs (a) through (g) in the first paragraph of (4); and in the last sentence of the second paragraph of (4), substituted "Twenty-five Thousand Dollars ($25,000.00)" for "ten thousand dollars ($10,000.00)," "Fifty Thousand Dollars ($50,000.00)" for "twenty thousand dollars ($20,000.00)," and "Twenty-five Thousand Dollars ($25,000.00)" for "five thousand dollars ($5,000.00)."

JUDICIAL DECISIONS

**1. In general.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

## § 63-15-31. Amounts required for satisfaction of judgment.

Judgments referred to in this chapter shall, for the purpose of this chapter only, be deemed satisfied:

(a) When Twenty-five Thousand Dollars ($25,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one (1) person as the result of any one (1) accident; or

(b) When, subject to such limit of Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person, the sum of Fifty Thousand Dollars ($50,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two (2) or more persons as the result of any one (1) accident; or

(c) When Twenty-five Thousand Dollars ($25,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one (1) accident.

However, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

**SOURCES: Codes, 1942, § 8285-15; Laws, 1952, ch. 359, § 15; Laws, 1972, ch. 349, § 3; Laws, 2005, ch. 483, § 3, eff from and after Jan. 1, 2006.**

**Amendment Notes** — The 2005 amendment, effective and in force from and after January 1, 2006, and applicable to policies issued or renewed on or after that date, substituted "Twenty-five Thousand Dollars ($25,000.00)" for "ten thousand dollars ($10,000.00)" in (a); substituted "Twenty-five Thousand Dollars ($25,000.00)" for "ten thousand dollars ($10,000.00)" and "Fifty Thousand Dollars ($50,000.00)" for "twenty thousand dollars ($20,000.00)" in (b); and substituted "Twenty-five Thousand Dollars ($25,000.00)" for "five thousand dollars ($5,000.00)" in (c).

## § 63-15-37. Methods of giving proof of financial responsibility generally.

JUDICIAL DECISIONS

**1. In general.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was

recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

## § 63-15-43. Motor vehicle liability policy; definition; required provisions.

(1) A "motor vehicle liability policy" as said term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in Section 63-15-39 or Section 63-15-41, as proof of financial responsibility, and issued, except as otherwise provided in Section 63-15-41, by an insurance company duly authorized to write motor vehicle liability insurance in this state, to or for the benefit of the person named therein as insured.

(2) Such owner's policy of liability insurance:

(a) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted.

(b) Shall pay on behalf of the insured named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, all sums which the insured shall become legally obligated to pay as damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Twenty-five Thousand Dollars ($25,000.00) because of bodily injury to or death of one (1) person in any one (1) accident and, subject to said limit for one (1) person, Fifty Thousand Dollars ($50,000.00) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and Twenty-five Thousand Dollars ($25,000.00) because of injury to or destruction of property of others in any one (1) accident.

(3) Such operator's policy of liability insurance shall pay on behalf of the insured named therein all sums which the insured shall become legally obligated to pay as damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(5) Such motor vehicle liability policy shall not insure:

(a) Any obligation for which the insured or any company as his insurer may be held liable under any workmen's compensation law;

(b) Any liability on account of bodily injury to or death of any employee of the insured while engaged in the employment, other than domestic, of the

insured, or in domestic employment if benefits therefor are either payable or required to be provided under any workmen's compensation law; or

(c) Any liability because of injury to or destruction of property owned by, rented to, in charge of or transported by the insured.

(6) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The liability of the insurance company with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance company and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance company to make payment on account of such injury or damage;

(c) The insurance company shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (b) of subsection (2) of this section; or

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the chapter shall constitute the entire contract between the parties.

(7) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage, the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(8) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance company for any payment the insurance company would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(9) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(10) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance companies which policies together meet such requirements.

(11) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

**SOURCES: Codes, 1942, § 8285-21; Laws, 1952, ch. 359, § 21; Laws, 1972, ch. 349, § 4; Laws, 2005, ch. 483, § 4, eff from and after Jan. 1, 2006.**

**Amendment Notes —** The 2005 amendment, effective and in force from and after January 1, 2006, and applicable to policies issued on renewed on or after that date, in

(2)(b), substituted "Twenty-five Thousand Dollars ($25,000.00)" for "ten thousand dollars ($10,000.00)," "Fifty Thousand Dollars ($50,000.00)" for "twenty thousand dollars ($20,000.00)," and "Twenty-five Thousand Dollars ($25,000.00)" for "five thousand dollars ($5,000.00)"; and substituted "paragraph (b)" for "subdivision (b)" preceding "of subsection (2)" in (6)(c).

### JUDICIAL DECISIONS

1. In general.
3. Liability coverage.
4. —Omnibus clause.

**1. In general.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

**3. Liability coverage.**

**4. —Omnibus clause.**

Where a county hospital and its employee were sued in tort for injuries related to a car accident that occurred when the employee was running an errand for her employer, the dismissal of the employee from the action under the Mississippi Tort Claims Act did not act as a release of her insurance company. The insurance company remained contractually obligated to defend the county hospital as an additional insured under Miss. Code Ann. § 63-15-43(2)(b). Franklin County Mem'l Hosp. v. Miss. Farm Bureau Mut. Ins. Co., 975 So. 2d 872 (Miss. 2008).

## § 63-15-53. Self-insurance.

### JUDICIAL DECISIONS

**1. In general.**

Car rental agency was not alleged to have known of or to have had a duty to suspect any recklessness about the renter, and the renter's valid license was inspected, and the required information was recorded on the rental contract; the car rental agency was a self-insurer and a clause recognizing the applicability of state motor-vehicle responsibility laws was printed on the reverse side of the rental agreement signed by the renter. Enter. Leasing Company-South Cent., Inc. v. Bardin, 8 So. 3d 866 (Miss. 2009).

## CHAPTER 16

## Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018]

SEC.

## § 63-16-1. Short title [Repealed effective July 1, 2018].

This chapter shall be known as the "Public Safety Verification and Enforcement Act."

**SOURCES: Laws, 2012, ch. 504, § 1, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11 provides:
"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.
Laws of 2012, ch. 504, §§ 9, provides:
"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

## § 63-16-3. Creation of electronic motor vehicle insurance verification system; system requirements [Repealed effective July 1, 2018].

(1) The Department of Public Safety, hereinafter referred to in this section as 'department,' in cooperation with the Commissioner of Insurance and the Department of Revenue, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under the Mississippi Motor Vehicle Safety-Responsibility Law.

(2) The department in cooperation with the Department of Revenue may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) Send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers through the Internet, World Wide Web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration and other applicable industry standards;

(b) Include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) Be accessible, without fee, to authorized personnel of the department, the Department of Revenue, the courts, law enforcement personnel,

county tax collectors, and other entities authorized by the department or the Department of Revenue under the provisions of Section 63-16-7;

(d) Be able to interface with existing department and Department of Revenue systems;

(e) Be able to be accessed by authorized users via a secure web browser;

(f) Receive insurance data file transfers from insurers under specifications and standards set forth in paragraph (a) of this subsection to identify motor vehicles that are not covered by an insurance policy;

(g) Provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department, the Department of Revenue or their designee for inclusion in the system;

(h) Provide a means to track separately or distinguish motor vehicles that are subject to a certificate of insurance under Section 63-15-39 or 63-15-41, a certificate of self-insurance under Section 63-15-53, a bond under Section 63-15-49, or a certificate of deposit of money or securities under Section 63-15-51;

(i) Distinguish motor vehicles that are exempt from the provisions of this chapter;

(j) Be available twenty-four (24) hours a day, seven (7) days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any motor vehicle in a manner prescribed by the department or the Department of Revenue; and

(k) Be installed and operational not later than July 1, 2013, following an appropriate testing period of not less than six (6) months.

(4) Every insurer shall cooperate with the department and the Department of Revenue in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage for:

(a) A motor vehicle insured by that company that is registered in this state; and

(b) If available, a motor vehicle that is insured by that company or that is operated in this state regardless of where the motor vehicle is registered.

**SOURCES: Laws, 2012, ch. 504, § 2, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

**Cross References —** Mississippi Motor Vehicle Safety-Responsibility Law, see § 63-15-1 et seq.

## § 63-16-5. Use of verification system by law enforcement [Repealed effective July 1, 2018].

(1) A law enforcement officer or authorized employee of a law enforcement agency may, during the course of a traffic stop or accident investigation, access the verification system established under Section 63-16-3 to verify whether a motor vehicle is covered by a valid motor vehicle liability policy in at least the minimum amounts required under Section 63-15-3(j).

(2) The response received from the system supersedes an insurance card produced by a motor vehicle owner or operator, and notwithstanding the display of an insurance card by the owner or operator, the law enforcement officer may issue a complaint and notice to appear to the owner or operator for a violation of the Mississippi Motor Vehicle Safety-Responsibility Law.

(3) Except upon reasonable cause to believe that a driver has violated another traffic regulation or that the driver's motor vehicle is unsafe or not equipped as required by law, a law enforcement officer may not use the verification system to stop a driver for operating a motor vehicle in violation of this chapter.

**SOURCES: Laws, 2012, ch. 504, § 3, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

**Cross References —** Mississippi Motor Vehicle Safety-Responsibility Law, see § 63-15-1 et seq.

## § 63-16-7. Administration and enforcement of chapter; rules [Repealed effective July 1, 2018].

(1) The Department of Public Safety, hereinafter referred to in this section as "department," and the Department of Revenue shall administer and enforce the provisions of this chapter, as applicable, and shall make rules, jointly or separately, necessary for the administration of the motor vehicle insurance verification system created under Section 63-16-3.

(2) The rules must:

(a) Establish standards and procedures for accessing the system by authorized personnel of the department, the Department of Revenue, the courts, law enforcement personnel, tax collectors of each county and any other entities authorized by the department or the Department of Revenue that are consistent with specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration and other applicable industry standards;

(b) Provide for the suspension of a vehicle registration and/or a driver's license when required by this chapter;

(c) Prohibit the reinstatement of a vehicle registration or driver's license unless the applicable fines have been paid; and

(d) Provide for periodic insurance data file transfers from insurers to identify motor vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory motor vehicle liability insurance requirements.

(3) The department and/or the Department of Revenue may adopt additional rules to:

(a) Assist authorized users in interpreting responses received from the motor vehicle insurance verification system and determining the appropriate action to be taken as a result of a response; and

(b) Otherwise clarify system operations and business rules.

**SOURCES: Laws, 2012, ch. 504, § 4, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

## § 63-16-9. Compliance with Motor Vehicle Safety-Responsibility Law required before receiving or renewing motor vehicle registration; maintenance of continuous coverage throughout registration period [Effective July 1, 2013; repealed effective July 1, 2018].

Every owner of a motor vehicle in this state shall comply with the motor vehicle liability insurance coverage in at least the minimum amounts required under Section 63-15-3(j) before that owner may receive a registration for a motor vehicle or renew a registration. The owner must also maintain continuous coverage in at least the minimum amounts required under Section 63-15-3(j) throughout the registration period. The verification system shall be used at registration to determine compliance with this section and the response received from the system supersedes an insurance card produced by a motor vehicle owner or operator, and notwithstanding the display of an insurance card by the owner or operator, the owner shall be denied a registration for a motor vehicle or renewal of a registration based on the verification system's response of noncompliance. The Department of Revenue must make the verification system available to the tax collector through its title/registration network system. If the owner is applying for the initial

registration of a motor vehicle, then the owner may be granted a registration notwithstanding the response received from the verification system.

**SOURCES: Laws, 2012, ch. 504, § 5, eff from and after July 1, 2013.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

**Cross References —** Mississippi Motor Vehicle Safety-Responsibility Law, see § 63-15-1 et seq.

## § 63-16-11. Applicability; defintion of commercial auto coverage [Repealed effective July 1, 2018].

(1) This chapter shall not apply to any motor vehicle that:

(a) Has commercial auto coverage;

(b) Is qualified for a fleet registration;

(c) Is part of a self-insured corporate or individual fleet registered under Section 27-19-66, or self-insured under Section 63-15-53;

(d) Is included in an insurance binder that has not been entered into the system at the time the verification system is accessed;

(e) Is exempted from the proof of insurance requirement under Section 63-15-4(1); or

(f) Has a gross vehicle weight of sixteen thousand (16,000) pounds or greater.

(2) For the purposes of this chapter, "commercial auto coverage" is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This chapter shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.

**SOURCES: Laws, 2012, ch. 504, § 6, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

## § 63-16-13. Failure to maintain liability insurance; penalties; appeal; Uninsured Motorist Identification Fund [Repealed effective July 1, 2018].

(1) If the owner of a motor vehicle being operated on the public roads, streets or highways of the State of Mississippi or registered in the State of Mississippi fails to have motor vehicle liability insurance in at least the minimum amounts required under Section 63-15-3(j), the Commissioner of Public Safety, the Commissioner of Revenue or a court of proper jurisdiction shall suspend the vehicle registration and/or the owner's or the operator's driving privilege and shall impose a civil penalty in an amount of Three Hundred Dollars ($300.00) upon a first conviction, in an amount of Four Hundred Dollars ($400.00) upon a second conviction and in an amount of Five Hundred Dollars ($500.00) upon a third or subsequent conviction. If suspended, the registration or driving privilege shall not be reinstated until the owner has motor vehicle liability insurance in at least the minimum amounts required under Section 63-15-3(j) and has paid the civil penalties imposed. Any person shall have the right to appeal any suspension or civil penalty under this section in a court of proper jurisdiction. If the matter is appealed and a violation is found, then the court shall not reduce, suspend or suspend the execution of any penalty imposed under the provisions of this subsection, in whole or inpart. It shall be the duty of the county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or in the event there is no such prosecuting attorney for the county, the duty of the district attorney to represent the state in any appeal held under this subsection. Civil penalties collected under this subsection shall be deposited into the special fund created under subsection (2) of this section. However, if the appeal of such civil penalty would be under the proper jurisdiction of a municipal court, One Hundred Dollars ($100.00) of the funds from such civil penalty shall be deposited in the general fund of that municipality. If the appeal of such civil penalty would be under the proper jurisdiction of any of the courts of a county, One Hundred Dollars ($100.00) of the funds from such civil penalty shall be deposited in the general fund of that county. A person convicted of a civil violation under this subsection (1) shall not be convicted of a criminal offense under Section 63-15-4(4) arising from the same incident.

(2)(a) There is created in the State Treasury a special fund to be designated as the "Uninsured Motorist Identification Fund." The fund shall consist of monies deposited therein as provided under subsection (1) of this section and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund; however, one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to the Motor Vehicle Ad Valorem Tax Reduction Fund created

under Section 27-51-105, and one-half (½) of any monies in excess of the amount needed to defray the expenses and costs of the verification system created under Section 63-16-3 remaining in the fund at the end of a fiscal year shall be transferred to the Mississippi Trauma Care Systems Fund created under Section 41-59-75.

(b) Monies in the special fund may be used by the Department of Public Safety and the Department of Revenue, upon appropriation by the Legislature, only for the purpose of defraying expenses and costs for the motor vehicle insurance verification system created under Section 63-16-3. Monies in the fund used for the purposes described in this paragraph (b) shall be in addition to other funds available from any other source for such purposes.

**SOURCES: Laws, 2012, ch. 504, § 7, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, §§ 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, except for Section 5 of this act which shall take effect and be in force from and after July 1, 2013.

Laws of 2012, ch. 504, §§ 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

## § 63-16-15. Repeal of Sections 63-16-1 through 63-16-13.

Sections 63-16-1 through 63-16-13 shall stand repealed from and after July 1, 2018.

**SOURCES: Laws, 2012, ch. 504, § 10, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 504, § 9, provides:

"SECTION 9. It is the intent of the Legislature that no portion of this act shall be interpreted to mean that any particular vendor's verification system or methodology be considered preferential to another's solely based on any language in this act and as long as the system is in compliance with this act.

# CHAPTER 17

# Manufacture, Sales and Distribution



## BILL OF SALE; NUMBERS AND MARKS ON MOTOR VEHICLES

## DISTRIBUTION AND SALES

SEC.

## § 63-17-55. Definitions.

The following words, terms and phrases, when used in the Mississippi Motor Vehicle Commission Law, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Motor vehicle" means any motor-driven vehicle of the sort and kind required to have a Mississippi road or bridge privilege license, and shall include, but not be limited to, motorcycles. "Motor vehicle" shall also mean an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of person or persons or property on a public highway and having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds, whether or not attached to a vehicle chassis.

(b) "Motor vehicle dealer" means any person, firm, partnership, copartnership, association, corporation, trust or legal entity, not excluded by paragraph (c) of this section, who holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles, and a license under the provisions of the Mississippi Motor Vehicle Commission Law, and such duly franchised and licensed motor vehicle dealers shall be the sole and only persons, firms, partnerships, copartnerships, associations, corporations, trusts or legal entities entitled to sell and publicly or otherwise solicit and advertise for sale new motor vehicles as such.

(c) The term "motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(ii) Public officers while performing their duties as such officers;

(iii) Employees of persons, corporations or associations enumerated in paragraph (c)(i) of this section when engaged in the specific performance of their duties as such employees; or

(iv) A motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1 or Section 57-75-5(f)(xxi); and the provisions of the Mississippi Motor Vehicle Commission Law shall not apply to:

1.a. Any lease by such a motor vehicle manufacturer of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis; or

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or

2. Any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

(d) "New motor vehicle" means a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(e) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his capacity as such dealer, who in good faith purchases such new motor vehicle for purposes other than for resale.

(f) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer.

(g) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of new motor vehicles.

(h) "Commission" means the Mississippi Motor Vehicle Commission.

(i) "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new motor vehicles.

(j) "Distributor" or "wholesaler" means any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(k) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation or trust who manufactures or assembles new motor vehicles for sale to distributors or wholesalers, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives.

(*l*) "Distributor branch" means a branch or division office similarly maintained by a distributor or wholesaler for the same purposes a factory branch or division is maintained.

(m) "Factory representative" means a representative employed by a person, firm, association, corporation or trust who manufactures or as-

sembles new motor vehicles, or by a factory branch, for the purpose of making or promoting the sale of his, its or their new motor vehicles, or for supervising or contacting his, its or their dealers or prospective dealers.

(n) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(o) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations and trusts, or any other forms of business enterprise, or any legal entity.

(p) "Good faith" means the duty of each party to any franchise, and all officers, employees or agents thereof, to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation or threats of coercion or intimidation from the other party. However, recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(q) "Coerce" means the failure to act in good faith in performing or complying with any terms or provisions of the franchise or agreement. However, recommendation, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(r) "Special tools" are those which a dealer was required to purchase by the manufacturer or distributor for service on that manufacturer's product.

(s) "Motor vehicle lessor" means any person, not excluded by paragraph (c) of this section, engaged in the motor vehicle leasing or rental business.

(t) "Specialty vehicle" means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, e.g. frame and drive train, and completing the manufacturer of finished motor vehicles for the purpose of resale with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. Specialty vehicles include garbage trucks, ambulances, fire trucks, buses, limousines, hearses and other similar limited purpose vehicles as the commission may by regulation provide.

(u) "Auto auction" means (i) any person who provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, (ii) any motor vehicle dealer licensed to sell used motor vehicles selling motor vehicles using an auction format but not on consignment, or (iii) any person who provides the facilities for or is in the business of selling in an auction format motor vehicles.

(v) "Motor home" means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(w) "Dealer-operator" means the individual designated in the franchise agreement as the operator of the motor vehicle dealership.

(x) "Franchise" or "franchise agreement" means a written contract or agreement between a motor vehicle dealer and a manufacturer or its distributor or factory branch by which the motor vehicle dealer is authorized to engage in the business of selling or leasing the specific makes, models or classifications of new motor vehicles marketed or leased by the manufacturer and designated in the agreement or any addendum to such agreement.

**SOURCES: Codes, 1942, § 8071.7-03; Laws, 1970, ch. 478, § 3; Laws, 1982, ch. 392; reenacted, Laws, 1983, ch. 344, § 3; reenacted without change, Laws, 1991, ch. 305, § 3; Laws, 1994, ch. 399, § 2; Laws, 2000, ch. 418, § 8; Laws, 2000, 3rd Ex Sess, ch. 1, § 20; Laws, 2006, ch. 432, § 2; Laws, 2007, ch. 303, § 9, eff from and after passage (approved Mar. 2, 2007.)**

**Amendment Notes** — The 2006 amendment added the last sentence in (a); and substituted "paragraph" for "subsection" in (b), (c)(iii), and (s).

The 2007 amendment inserted "or Section 57-75-5(f)(xxi)" following "Section 57-75-5(f)(iv)1" in the introductory paragraph of (c)(iv).

## § 63-17-57. Creation of Motor Vehicle Commission; appointment and terms of members; officers.

There is hereby created the Mississippi Motor Vehicle Commission to be composed of eight (8) members, one (1) of whom shall be appointed by the Attorney General from the state at large for a term of four (4) years and one (1) of whom shall be appointed by the Secretary of State from the state at large for a term of four (4) years, and six (6) licensees who shall be appointed by the Governor, one (1) from the state at large and one (1) from each of the five (5) congressional districts of this state for terms of the following duration: the term of the member from the state at large shall expire at the time the incumbent Governor's term expires, the term of the member appointed from the First Congressional District shall expire on June 30, 1973, the term of the member appointed from the Second Congressional District shall expire on June 30, 1974, the term of the member appointed from the Third Congressional District shall expire on June 30, 1976, the term of the member from the Fourth Congressional District shall expire on June 30, 1977, and the term of the member appointed from the Fifth Congressional District shall expire on June 30, 1978. Each member shall serve until his successor is appointed and qualified. At the expiration of the term of the member initially appointed by the Attorney General each successor member shall be appointed for a term of four (4) years by the incumbent Attorney General, and at the expiration of the term of the member appointed by the Secretary of State each successor member shall be appointed for a term of four (4) years by the incumbent Secretary. At the expiration of a term for which each of the initial appointments of the Governor is made, each successor member shall be appointed for a term of seven (7) years except that the term of the member appointed from the state at large shall be coterminous with that of the Governor making the appointment. The members of the commission as constituted on July 1, 2006, who are appointed by the Governor and whose terms have not expired shall serve the balance of their terms, after which time the gubernatorial appointments shall be made as follows: The Governor shall appoint one (1) member of the commission from each of the four (4) congressional districts and two (2) from the state at large.

The member appointed from the state at large by the Governor shall serve as chairman of the commission and one (1) of the other members appointed by the Governor shall be designated by him to serve as vice chairman. In the

absence of the chairman at any meeting of the commission the vice chairman shall preside and perform the duties of the chairman.

In the event of a vacancy created by the death, resignation or removal of any member of the commission the vacancy shall be filled by appointment of the Governor, Attorney General or the Secretary of State, as the case may be, for the unexpired portion of the term. All appointments made pursuant to this section shall be made with the advice and consent of the Senate.

**SOURCES: Codes, 1942, § 8071.7-04; Laws, 1970, ch. 478, § 4; reenacted without change, Laws, 1983, ch. 344, § 4; reenacted without change, Laws, 1991, ch. 305, § 4; Laws, 2006, ch. 432, § 3, eff from and after July 1, 2006.**

**Amendment Notes** — The 2006 amendment added the last sentence in the first paragraph; and substituted "All appointments made pursuant to this section shall be made" for "All appointments hereunder shall be made" in the last sentence of the last paragraph.

### ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

## § 63-17-59. Qualifications of members of commission.

### ATTORNEY GENERAL OPINIONS

The broad authority given to the Motor Vehicle Commission places the determination of licensee qualifications within the discretion of that Commission. Further, a licensee appointed to membership on the Commission is entitled to serve his full term unless his license is suspended or revoked pursuant to § 63-17-85, or he moves out of the state, or he is no longer a qualified elector of the jurisdiction from which he was appointed. Arider, July 17, 2004, A.G. Op. 04-0332.

## § 63-17-69. Promulgation, etc., of rules and regulations by commission.

### JUDICIAL DECISIONS

**1. Liability.**

Where the buyer purchased a Jeep that was previously involved in an accident, the seller did not have a duty to disclose the prior damages under Regulation One, promulgated by the Mississippi Motor Vehicle Commission under Miss. Code Ann. § 63-17-69; the seller was entitled to summary judgment in the buyers' suit for damages. Holman v. Howard Wilson Chrysler Jeep, Inc., 972 So. 2d 645 (Miss. Ct. App. 2006), reversed by, remanded by 2007 Miss. LEXIS 544 (Miss. Sept. 27, 2007).

## § 63-17-73. Offenses and penalties.

(1) It is unlawful and a misdemeanor:

(a) For any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, motor

vehicle salesman, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, wholesaler branch or division, factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided in the Mississippi Motor Vehicle Commission Law, regardless of whether or not the person, firm, association, corporation or trust maintains or has a place or places of business in this state. Any person, firm, association, corporation or trust engaging, acting or serving in more than one (1) of the capacities or having more than one (1) place where the business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

(b) For a motor vehicle dealer or a motor vehicle salesman:

1. To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer.

2. To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle.

3. To resort to or use any false or misleading advertisement in connection with his business as a motor vehicle dealer or motor vehicle salesman.

(c) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof, to coerce, or attempt to coerce, any motor vehicle dealer:

1. To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall not have been voluntarily ordered by the motor vehicle dealer.

2. To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer thereof.

3. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever.

4. To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

(d) For a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesaler branch or division, or officer, agent or other representative thereof:

1. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of dealer's order to any duly licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of

new motor vehicles sold or distributed by such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, any motor vehicles as are covered by such franchise or contract specifically publicly advertised by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division or wholesale branch or division, to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this subsection if the failure be due to acts of God, work stoppages or delays due to strikes or labor difficulties, freight embargoes or other causes over which the manufacturer, distributor or wholesaler, or any agent thereof, shall have no control.

2. To coerce, or attempt to coerce any motor vehicle dealer to enter into any agreement, with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, and the dealer. However, good faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection.

3. To terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of such franchise or selling agreement. "Due cause" shall be defined as a breach by the dealer of a material provision of the franchise agreement which breach has not been cured within a reasonable time after the dealer has been given written notice of the breach. The burden of proving that due cause exists shall be upon the party attempting to terminate, cancel or not renew the franchise or selling agreement. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination or cancellation. The manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof shall notify a motor vehicle dealer in writing, and forward a copy of the notice to the commission, at least sixty (60) days before the contractual term of his franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no intention to renew the franchise or selling agreement. In

no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the motor vehicle dealer involved, prior to the expiration of at least sixty (60) days following such written notice. Any motor vehicle dealer who receives written notice that his franchise or selling agreement is being terminated or cancelled or who receives written notice that his franchise or selling agreement will not be renewed, may, within the sixty-day notice period, file with the commission a verified complaint for its determination as to whether the termination or cancellation or nonrenewal is unfair within the purview of the Mississippi Motor Vehicle Commission Law, and the franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint notwithstanding anything to the contrary contained in the law or in the franchise or selling agreement.

4. To resort to or use any false or misleading advertisement in connection with his or its business as such manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesaler branch or division, or officer, agent or other representative thereof.

5. To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs which result in such lesser actual price. The provisions of this subsection shall not apply so long as a manufacturer, distributor or wholesaler, or any agent thereof, offers to sell or sells new motor vehicles to all motor vehicle dealers at the same price. This subsection shall not be construed to prevent the offering of volume discounts if such discounts are equally available to all franchised dealers in this state.

The provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by said dealer in a driver education program, or to sales to a motor vehicle dealer for resale to any unit of government, federal, state or local.

6. To offer to sell or to sell any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in such lesser actual price.

7. To offer to sell or to sell parts and/or accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a comparable part or accessory, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and/or accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets, and nothing herein contained shall be construed to prevent a manufacturer, distributor or wholesaler, or any agent thereof, from selling to a motor vehicle dealer

who operates and serves as a wholesaler of parts and accessories, the parts and accessories as may be ordered by such motor vehicle dealer for resale to retail outlets, at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories.

8. To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any capital standards agreed to between the dealership and the manufacturer, distributor or wholesaler, provided such standards are deemed reasonable by the commission.

9. To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor or wholesaler which consent shall not be unreasonably withheld.

10. To condition unreasonably the renewal or extension of a franchise on a motor vehicle dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the motor vehicle dealer. The manufacturer shall notify the motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one hundred eighty (180) days prior to the renewal or extension, and the manufacturer shall demonstrate to the commission the need for the demand in view of the need to service the public and the economic conditions existing in the motor vehicle industry at the time the action would be required of the motor vehicle dealer. As part of any such condition the manufacturer shall offer the motor vehicle dealer a reasonable initial supply and model mix of motor vehicles to meet the sales levels necessary to support the increased overhead incurred by the motor vehicle dealer by reason of the renovation, construction, purchase or rental of a new place of business.

11. To require, coerce or attempt to coerce a motor vehicle dealer to refrain from participation in the management of, investment in or the acquisition of any other line of motor vehicles or related products, as long as the motor vehicle dealer maintains a reasonable line of credit for each dealership and the motor vehicle dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer or distributor. The reasonable facilities' requirements may not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel or display space when the requirements are unreasonable considering current economic conditions and not otherwise justified by

reasonable business considerations. The burden of proving by a preponderance of the evidence that the current economic conditions and reasonable business considerations do not justify exclusive facilities is on the dealer.

12. To fail or refuse to sell or offer to sell to all motor vehicle dealers in a line or make, every motor vehicle sold or offered for sale under the franchise agreement to any motor vehicle dealer of the same line or make; or to unreasonably require a motor vehicle dealer to pay an extra fee, purchase unreasonable advertising displays or any other materials, or to unreasonably require the dealer-operator to remodel, renovate or recondition its existing facilities as a prerequisite to receiving a certain model or series of vehicles. However, the failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause of which the manufacturer or distributor has no control. This provision shall not apply to manufacturers of recreational vehicles.

13. To attempt to coerce, or coerce, a motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated motor vehicle dealers. Any performance standards shall be fair, reasonable, equitable and based upon accurate information. If dealership performance standards are based on a survey, the manufacturer or distributor shall establish the objectivity of the survey process and provide this information to any motor vehicle dealer of the same line or make covered by the survey request. Upon request of the dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information pertaining to that dealer used in the application of the performance standard or program to that dealer.

14. To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for the ultimate purchasers prior to the dealer's receipt of written official price increase notification. A sales contract signed by the ultimate purchaser that includes model and firm price shall constitute evidence of each such order provided that the vehicle is in fact delivered to that purchaser.

(2) Concerning any sale of a motor vehicle or vehicles to the State of Mississippi, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer, distributor or wholesaler shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offer or offers to all other of its dealers within the state. If the inducements above mentioned are made, the manufacturer, distributor or wholesaler shall give simultaneous notice thereof to all of its dealers within the state.

(3) It is unlawful to be a broker. For the purpose of this subsection, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(a) A new motor vehicle dealer or agent or employee of such a dealer; or

(b) A distributor or an agent or employee of such a distributor.

However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

**SOURCES: Codes, 1942, § 8071.7-05; Laws, 1970, ch. 478, § 5; reenacted without change, Laws, 1983, ch. 344, § 12; reenacted without change, Laws, 1991, ch. 305, § 12; Laws, 1994, ch. 399, § 3; Laws, 2000, ch. 418, § 9; Laws, 2006, ch. 432, § 4, eff from and after July 1, 2006.**

**Amendment Notes —** The 2006 amendment, in (1)(d)3, added the third and fourth sentences, substituted "franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal, in those cases where there is no intention to renew the franchise or selling agreement" for "franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for such nonrenewal, in those cases where there is no intention to renew the same" in the sixth sentence; added "which consent shall not be unreasonably withheld" at the end of (1)(d)9; added (1)(d)14; and made minor stylistic changes throughout.

## JUDICIAL DECISIONS

**1. In general.**

It was illegal for the customers' demonstrator vehicle to be represented and sold as a new car under the Mississippi Vehicle Commission Act, Miss. Code Ann. § 63-17-73(1)(b)(2). Holman v. Howard Wilson Chrysler Jeep, Inc., 972 So. 2d 564 (Miss. 2008).

In a case in which buyers of a demonstrator vehicle sued a car dealership for claims related to the purchase of the vehicle, it was illegal for the demonstrator vehicle, which had been damaged in an automobile accident, to be represented and sold as a new car under the Motor Vehicle Commission Act. Holman v. Howard Wilson Chrysler Jeep, Inc., — So. 2d —, 2007 Miss. LEXIS 544 (Miss. Sept. 27, 2007), opinion withdrawn by, substituted opinion at, remanded by 972 So. 2d 564, 2008 Miss. LEXIS 28 (Miss. 2008).

## ATTORNEY GENERAL OPINIONS

Because the only express requirement in this section for a separate license is for "each capacity and place of business"; therefore, it does not specifically require an existing licensed motor vehicle dealer to obtain another dealer license to represent another manufacturer at the same location. Day, Apr. 29, 2004, A.G. Op. 04-0076.

A firm manufacturing and selling "specialty vehicles" to public agencies under the provisions of the state public purchasing laws is not required to obtain a Mississippi Motor Vehicle Dealer License. Mangum, Apr. 15, 2005, A.G. Op. 05-0163.

## § 63-17-76. Application for used motor vehicle dealer's license to be accompanied by documentation of completion of education seminar; conduct of seminars; approval of seminars by State Tax Commission.

(1) Every application for the issuance of a used motor vehicle dealer's license shall be accompanied by such evidence as the State Tax Commission shall prescribe, documenting the completion of an education seminar conducted by the Mississippi Independent Auto Dealers Association during the twelve-month period immediately preceding the date of application. Completion of an eight-hour licensing seminar conducted by the Mississippi Independent Auto Dealers Association shall be required for an initial license. All seminars must be approved by the State Tax Commission. The education requirements of this section shall not apply to:

(a) Used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers;

(b) A manufactured home dealer; or

(c) A franchised new car dealer licensed under the Mississippi Motor Vehicle Commission Law or any employee of such a dealer.

(2) The Mississippi Independent Auto Dealers Association shall submit to the State Tax Commission a complete and specific description of the seminars it conducts pursuant to this section, a description of how the seminar will benefit licensees in conducting their businesses, the number of hours involved, a description of the method which will be used to ensure attendance, and copies of any instructional materials which will be provided to attendees. At the time approval is granted, the State Tax Commission shall determine how many hours of education may be received by attending the program.

**SOURCES: Laws, 2007, ch. 431, § 1, eff from and after July 1, 2007.**

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

**Cross References —** Specific duties and powers of the State Tax Commission, see § 27-3-31.

## § 63-17-103. Restrictions on right to advertise motor vehicle as new; enforcement of restriction.

(1) Nothing in the Mississippi Motor Vehicle Commission Law shall be construed to prohibit the sale of a new motor vehicle by any person who is not required to be licensed under said law. However, only a motor vehicle dealer as defined in Section 63-17-55 shall have the right to advertise or represent, publicly or otherwise, that a motor vehicle is new in connection with its sale, exchange or other disposition. Any person who is not such a motor vehicle dealer and who advertises or represents that a motor vehicle is new in

connection with its sale, exchange or other disposition shall be guilty of a misdemeanor and upon conviction shall be punished in the manner provided for by Section 63-17-105. However, nothing in this section shall apply to (a) any lease by a motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv)1 or Section 57-75-5(f)(xxi) of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis, or any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or (b) any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

(2) Any person who violates the provisions of subsection (1) of this section may be enjoined from further violations of such provisions by writ of injunction issued out of a court of equity upon a bill filed in the name of the state by the Attorney General, or any district or county attorney whose duty requires him to prosecute criminal cases on behalf of the state, in the county where such violation occurred.

**SOURCES: Codes, 1942, § 8071.7-10; Laws, 1970, ch. 478, § 10; Laws, 1977, ch. 411, § 5; reenacted, Laws, 1983, ch. 344, § 27; reenacted without change, Laws, 1991, ch. 305, § 27; Laws, 2000, 3rd Ex Sess, ch. 1, § 21; Laws, 2007, ch. 303, § 10, eff from and after passage (approved Mar. 2, 2007.)**

**Amendment Notes —** The 2007 amendment inserted "or Section 57-75-5(f)(xxi)" following "Section 57-75-5(f)(iv)1" in the fourth sentence of (1).

## § 63-17-109. Right of first refusal.

(1) In the event of a proposed sale or transfer of a dealership and the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or any other reliable means of communication, notice of its intent to exercise its right of first refusal within sixty (60) days of receipt of the executed contract for the proposed sale or transfer and completed application and related documents reasonably requested by the manufacturer or distributor. The manufacturer or distributor shall provide the application and notice of other requirements within fifteen (15) days of request. In no event shall the manufacturer or distributor exercise its right of first refusal more than one hundred twenty (120) days after receipt of the executed contract. The manufacturer or distributor and the applicant shall

act in good faith to provide the required information in a timely and expeditious manner.

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms and conditions that are either the same as or greater than that for which such dealer has contracted for in connection with the proposed transaction.

(2) The manufacturer's or distributor's right of first refusal shall not apply to a transaction involving one (1) of the following:

(a) A designated family member or members, including the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer-operator, or one or more motor vehicle dealer owners;

(b) A manager employed by the motor vehicle dealer in the dealership during the previous five (5) years that is otherwise qualified as a dealer-operator;

(c) A partnership or corporation controlled by any of the family members of the dealer-operator;

(d) A trust arrangement established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such pursuant to the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3)(a) The manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed owner prior to the exercise of the right of first refusal in negotiating and implementing the contract for the proposed sale of the dealership. The expenses and attorneys' fees shall be paid to the proposed new owner at the time of the closing of the sale at which the manufacturer or distributor exercises its right of first refusal.

(b) No payment of expenses and attorneys' fees shall be required if the person claiming reimbursement has not submitted or caused to be submitted an accounting of those expenses within thirty (30) days after the receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) If the selling dealer discloses the manufacturer's right of first refusal to the proposed owner in writing, the motor vehicle dealer shall not have any liability to any person as a result of a manufacturer or distributor exercising its right of first refusal and the manufacturer or distributor shall assume the defense of the selling motor vehicle dealer for any claims by the proposed owner arising from the exercise of the right of first refusal.

(5) If the manufacturer or distributor does not exercise its right of first refusal within the time period set forth in subsection (1) (a), the manufacturer or distributor shall act upon the proposed sale of the franchise promptly and in good faith but in no event more than one hundred twenty (120) days after

receipt of the completed application and related documents reasonably requested by the manufacturer or distributor.

**SOURCES: Laws, 2000, ch. 418, § 2; Laws, 2006, ch. 432, § 5, eff from and after July 1, 2006.**

**Amendment Notes** — The 2006 amendment rewrote (1)(a); added (5); and made minor stylistic changes throughout.

## § 63-17-116. Relevant market areas established for new motor vehicle dealers in counties having certain populations; notice to same line-make motor vehicle dealer in relevant market area required; standing to object to additional franchise agreements; factors for determining good cause for additional new motor vehicle dealer.

(1) For purposes of this section, "relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than sixty thousand (60,000), the area within a radius of ten (10) miles of the intended site of the proposed or relocated dealer. The ten-mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business; or

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is sixty thousand (60,000) or less, the area within radius of fifteen (15) miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The fifteen-mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

(2) As used in this section, "relocate" and "relocation" shall not include the relocation of a new motor vehicle dealer within two (2) miles of its established place of business.

(3) Before a franchisor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the franchisor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intent to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(4) Within sixty (60) days after receiving the notice provided for in subsection (3) of this section, or within sixty (60) days after the end of any appeal or alternative dispute resolution procedure provided by the franchisor,

a new motor vehicle dealer may file a verified complaint before the Mississippi Motor Vehicle Commission pursuant to Section 63-17-91 to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. The Mississippi Motor Vehicle Commission shall render a decision on the verified complaint within sixty (60) days of its filing. If the commission fails to render its decision within the sixty-day time period, either party may file an appeal pursuant to Section 63-17-99, and the court will conduct a hearing and take evidence, both oral and documentary, in the place of the Mississippi Motor Vehicle Commission and shall render a decision utilizing the factors set forth in subsection (7).

(5) This section shall not apply to:

(a) The reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding two (2) years, if the established place of business of the reopened or replacement dealer is within two (2) miles of the established place of business of the closed dealership.

(b) The entering into of a renewal, replacement, or succeeding franchise agreement with an existing motor vehicle dealer whose operations will continue at the dealer's then current location; or

(c) The relocation of an existing or replacement dealer to a location within the existing or replacement dealer's own relevant market area if the proposed new location is not within a six-mile radius of any other same line-make motor vehicle dealer.

(6) Only a dealer into whose relevant market area the proposed new franchise or relocated dealer will be located shall have standing to object to the additional franchise agreement or relocation or to take any other action under this chapter with respect to the proposed appointment or relocation. Such a dealer may not protest the relocation of an existing dealer or the establishment of a replacement dealer if the proposed location is further away from the dealer than the relocating or replacement dealer's current or former location.

(7) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the Mississippi Motor Vehicle Commission shall take into consideration the existing circumstances including, but not limited to, the following:

(a) Permanency of the investment;

(b) Effect on the retail motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare;

(d) Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer in the relevant market area would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area;

(g) Effect on the relocating dealer and the franchisor of a denial of the establishment of a new dealer in, or a relocation of a dealer into, the relevant market area; and

(h) Effect on the objecting dealer of the relocation or establishment of a new proposed franchise location.

**SOURCES: Laws, 2006, ch. 432, § 1, eff from and after July 1, 2006.**

**Editor's Note —** Laws of 2006, ch. 432, § 7 provides as follows:
"SECTION 7. Section 1 of this act shall be codified in Chapter 17 of Title 63, Mississippi Code of 1972."

## § 63-17-119. Suit to recover damages; venue; requirement that dealer waive right to trial void.

(1) Notwithstanding any provision of a franchise agreement to the contrary, if any motor vehicle dealer or dealer-operator incurs pecuniary loss due to a violation of the Mississippi Motor Vehicle Commission Law by a manufacturer or distributor, the motor vehicle dealer or dealer-operator may bring suit in a court of competent jurisdiction and recover damages, together with costs, including reasonable attorneys' fees.

(2) Venue for any proceeding arising from the franchise agreement shall be in Mississippi and shall be consistent with Mississippi law. It is the public policy of this state that venue provided for in this section may not be modified by contract. Any provision contained in the franchise agreement that requires arbitration or litigation to be conducted outside the State of Mississippi shall be void and unenforceable.

(3) Notwithstanding any provision in a franchise agreement to the contrary, any requirement that a dealer waive its right to a trial by jury is void and unenforceable.

**SOURCES: Laws, 2000, ch. 418, § 7; Laws, 2006, ch. 432, § 6, eff from and after July 1, 2006.**

**Amendment Notes —** The 2006 amendment added (3).

DEALER CONTRACTS

SEC.
63-17-141. Duties of dealer and manufacturer or distributor upon termination or nonrenewal of franchise agreement.

## § 63-17-141. Duties of dealer and manufacturer or distributor upon termination or nonrenewal of franchise agreement.

(1) A new motor vehicle dealer shall return property, including, but not limited to, vehicle inventory, parts, equipment, tools and signs as permitted under this section or as set forth in the franchise agreement to the manufacturer or distributor within ninety (90) days of the effective date of any

termination or nonrenewal of a franchise. The manufacturer or distributor shall supply the new vehicle dealer with instructions on the method by which the new vehicle dealer must return the property to the manufacturer or distributor. Within sixty (60) days of tender of the property to the manufacturer or distributor, the manufacturer or distributor shall repurchase from the new vehicle dealer and remit payment to the new vehicle dealer for the following:

(a) Any new, undamaged and unsold motor vehicle inventory of the current or prior model year, that has been acquired from the manufacturer or distributor, including up to five (5) dealer transfers acquired prior to notification of termination or nonrenewal of a franchise.

(b) All new, unused, undamaged parts listed in the current price catalog and in the original, resalable merchandising packages and in unbroken lots acquired from a manufacturer or distributor or a source approved or recommended by the manufacturer or distributor at the prices listed in the current parts catalog less applicable allowances plus five percent (5%) of the catalog value of the part for the cost of packing and returning the parts to the manufacturer or distributor. Reconditioned or core parts shall be valued at their core value, price listed in the current parts catalog, or the amount paid for expedited return of core parts, whichever is higher.

(c) Any special tools offered for sale during the four (4) years preceding termination, and each trademark or trade name bearing signs which were recommended or required by the manufacturer or distributor at fair market value at the time the notice of termination or nonrenewal is given.

(2) The dealer shall provide evidence of good clear title upon return of the inventory. Any payment owed the dealer is subject to offset of any obligations owed by the dealer to the manufacturer.

(3) The Mississippi Motor Vehicle Commission shall have the authority to enforce the provisions of this section when disputes between new motor vehicle dealers and manufacturers or distributors arise under this section.

(4) This section shall not apply to motor homes.

**SOURCES: Laws, 1994, ch. 399, § 1; Laws, 2010, ch. 395, § 1, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment added (3) and redesignated former (3) as (4).

## SALES OF ALL-TERRAIN VEHICLES AND MOTORCYCLES

SEC.

## § 63-17-171. Levy of point-of-sale fee on retail sales of all-terrain vehicles and motorcycles; levy of fee on purchaser of new all-terrain vehicle or motorcycle purchased in another state and brought into Mississippi; applicability of sales tax law.

(1)(a) There is levied a point-of-sale fee of Fifty Dollars ($50.00) on the retail sales of all-terrain vehicles and motorcycles as defined in Section 63-21-5. The seller of an all-terrain vehicle or a motorcycle shall collect the fee from the purchaser at the time of sale and remit the fee to the Department of Revenue, which shall deposit the proceeds of the fees into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(b) The seller of an all-terrain vehicle or a motorcycle shall provide a written statement to the purchaser, which may be printed on the sales receipt, that reads as follows: "$50.00 of the amount that you paid for this vehicle will be used to fund the Mississippi Trauma Care System."

(2)(a) There is levied a fee of Fifty Dollars ($50.00) on a resident of this state who purchases a new and not previously registered motorcycle in another state and brings the motorcycle into this state. The person shall pay the fee to the tax collector at the time of registering the motorcycle and applying for a license tag. The tax collector shall remit the fee to the Department of Revenue, which shall deposit the proceeds of the fee into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(b) There is levied a fee of Fifty Dollars ($50.00) on a resident of this state who purchases a new all-terrain vehicle in another state and brings the vehicle into this state. The person shall pay the fee to the Department of Revenue, which shall deposit the proceeds of the fee into the Mississippi Trauma Care Systems Fund created in Section 41-59-75.

(3) As used in this section, the term "all-terrain vehicle" shall not include vehicles designed for use as golf carts.

(4) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for the fees imposed by this section, and the Commissioner of Revenue shall exercise all the power and authority and perform all the duties with respect to this section as are provided in the Sales Tax Law except where there is a conflict, then the provisions of this section prevail.

**SOURCES: Laws, 2008, ch. 549, § 7; Laws, 2011, ch. 545, § 10; Laws, 2012, ch. 566, § 9, eff from and after passage (approved May 25, 2012.)**

**Editor's Note —** Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

**Amendment Notes —** The 2011 amendment redesignated former (1) and (2) as (1)(a) and (b); substituted "Department of Revenue" for "State Tax Commission" in the last sentence of (1)(a); and added (2)(a) and (b).

The 2012 amendment added (3) and (4).

**Cross References —** Mississippi Sales Tax Law, see § 27-65-1, et seq.

## CHAPTER 19

## Motor Vehicle Sales Finance Law

### § 63-19-31. Execution, terms and delivery of retail installment contract.

#### JUDICIAL DECISIONS

**1. Required disclosure.**

Where plaintiff African-American car buyers alleged defendants, a lender and car dealers, failed to disclose a higher dealer mark-up than that which was charged to white buyers, the claim failed because the markups, which were an element of the total finance charge, did not have to be disclosed under the Mississippi Vehicle Sales Financing Law, Miss. Code Ann. § 63-19-31(2)(h); allegations of racial animus went to the discrimination claims but did nothing to support the fraudulent nondisclosure claims. Davis v. GMAC, 406 F. Supp. 2d 698 (N.D. Miss. 2005).

### § 63-19-43. Maximum finance charge; security interests.

#### RESEARCH REFERENCES

**ALR.** Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

## CHAPTER 21

## Motor Vehicle Titles

Sec.

## § 63-21-3. Administration.

The terms and provisions of this chapter shall be administered by the Department of Revenue. The Department of Revenue shall have charge of all the affairs of administering the laws of the state relative to vehicle registration and titling and manufactured housing titling as hereinafter provided and may employ such administrative and clerical assistance, material and equipment as may be necessary to enable it to speedily, completely and efficiently perform the duties as outlined in this chapter.

**SOURCES: Codes, 1942, § 8125-22; Laws, 1968, ch. 531, § 2; Laws, 1999, ch. 556, § 2; Laws, 2009, ch. 492, § 123, eff from and after July 1, 2010.**

**Editor's Note —** Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

**Amendment Notes —** The 2009 amendment, effective from and after July 1, 2010, substituted "Department of Revenue" for "State Tax Commission" both times it appears.

**Cross References —** Department of revenue generally, see §§ 27-3-1 et seq.

## § 63-21-5. Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section except where the context clearly indicates a different meaning:

(a) "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Dealer" means every person engaged regularly in the business of buying, selling or exchanging motor vehicles, trailers, semitrailers, trucks, tractors or other character of commercial or industrial motor vehicles in this state, and having in this state an established place of business as defined in Section 27-19-303, Mississippi Code of 1972. The term "dealer" shall also

mean every person engaged regularly in the business of buying, selling or exchanging manufactured housing in this state, and licensed as a dealer of manufactured housing by the Mississippi Department of Insurance.

(c) "Designated agent" means each county tax collector in this state who may perform his duties under this chapter either personally or through any of his deputies, or such other persons as the Department of Revenue may designate. The term shall also mean those "dealers" as herein defined and/or their officers and employees and other persons who are appointed by the Department of Revenue in the manner provided in Section 63-21-13, Mississippi Code of 1972, to perform the duties of "designated agent" for the purposes of this chapter.

(d) "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(e) "Vehicle identification number" means the numbers and letters on a vehicle, manufactured home or mobile home designated by the manufacturer or assigned by the Department of Revenue for the purpose of identifying the vehicle, manufactured home or mobile home.

(f) "Lien" means every kind of written lease which is substantially equivalent to an installment sale or which provides for a right of purchase; conditional sale; reservation of title; deed of trust; chattel mortgage; trust receipt; and every other written agreement or instrument of whatever kind or character whereby an interest other than absolute title is sought to be held or given on a motor vehicle, manufactured home or mobile home.

(g) "Lienholder" means any natural person, firm, copartnership, association or corporation holding a lien as herein defined on a motor vehicle, manufactured home or mobile home.

(h) "Manufactured housing" or "manufactured home" means any structure, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USCS, Section 5401.

(i) "Manufacturer" means any person regularly engaged in the business of manufacturing, constructing or assembling motor vehicles, manufactured homes or mobile homes, either within or without this state.

(j) "Mobile home" means any structure, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width

or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein and manufactured prior to June 15, 1976. Any mobile home designated as realty on or before July 1, 1999, shall continue to be designated as realty so that a security interest will be made by incorporating such mobile home in a deed of trust.

(k) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a farm tractor.

(*l*) "Motor vehicle" means every automobile, motorcycle, mobile trailer, semitrailer, truck, truck tractor, trailer and every other device in, upon, or by which any person or property is or may be transported or drawn upon a public highway which is required to have a road or bridge privilege license, except such as is moved by animal power or used exclusively upon stationary rails or tracks.

(m) "New vehicle" means a motor vehicle, manufactured home or mobile home which has never been the subject of a first sale for use.

(n) "Used vehicle" means a motor vehicle, manufactured home or mobile home that has been the subject of a first sale for use, whether within this state or elsewhere.

(o) "Owner" means a person or persons holding the legal title of a vehicle, manufactured home or mobile home; in the event a vehicle, manufactured home or mobile home is the subject of a deed of trust or a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the grantor in the deed of trust, mortgagor, conditional vendee or lessee, the grantor, mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this chapter.

(p) "Person" includes every natural person, firm, copartnership, association or corporation.

(q) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, boats or structural members capable generally of sustaining themselves as beams between the supporting connections.

(r) "Security agreement" means a written agreement which reserves or creates a security interest.

(s) "Security interest" means an interest in a vehicle, manufactured home or mobile home reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security. A security interest is "perfected"

when it is valid against third parties generally, subject only to specific statutory exceptions.

(t) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes, vehicles so constructed that they exceed eight (8) feet in width and/or thirteen (13) feet six (6) inches in height, and earth-moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(u) "Nonresident" means every person who is not a resident of this state.

(v) "Current address" means a new address different from the address shown on the application or on the certificate of title. The owner shall within thirty (30) days after his address is changed from that shown on the application or on the certificate of title notify the department of the change of address in the manner prescribed by the department.

(w) "Odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary instrument designed to be reset by the operator of the motor vehicle for the purpose of recording the distance traveled on trips.

(x) "Odometer reading" means the actual cumulative distance traveled disclosed on the odometer.

(y) "Odometer disclosure statement" means a statement certified by the owner of the motor vehicle to the transferee or to the department as to the odometer reading.

(z) "Mileage" means actual distance that a vehicle has traveled.

(aa) "Trailer" means every vehicle other than a "pole trailer" as defined in this chapter without motive power designed to be drawn by another vehicle and attached to the towing vehicle for the purpose of hauling goods or products. The term "trailer" shall not refer to any structure, transportable in one or more sections regardless of size, when erected on site, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein regardless of the date of manufacture.

(bb) "Salvage mobile home" or "salvage manufactured home" means a mobile home or manufactured home for which a certificate of title has been issued that an insurance company obtains from the owner as a result of paying a total loss claim resulting from collision, fire, flood, wind or other occurrence. The term "salvage mobile home" or "salvage manufactured

home" does not mean or include and is not applicable to a mobile home or manufactured home that is twenty (20) years old or older.

(cc) "Salvage certificate of title" means a document issued by the department for a salvage mobile home or salvage manufactured home as defined in this chapter.

(dd) "All-terrain vehicle" means a motor vehicle that is designed for off-road use and is not required to have a motor vehicle privilege license.

**SOURCES: Codes, 1942, § 8125-23; Laws, 1968, ch. 531, § 3; Laws, 1986, ch. 328, § 1; Laws, 1989, ch. 369, § 1; Laws, 1999, ch. 396, § 1; Laws, 1999, ch. 556, § 3; Laws, 2005, ch. 335, § 1; Laws, 2006, ch. 422, § 1; Laws, 2009, ch. 492, § 124, eff from and after July 1, 2010.**

**Editor's Note —** Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

**Amendment Notes —** The 2005 amendment deleted "The term" preceding each word or phrase in (b) through (bb); substituted "means" for "shall mean" throughout; and added (dd).

The 2006 amendment added the second sentence in (j).

The 2009 amendment, effective from and after July 1, 2010, inserted "or 'department'" in (a); substituted "Department of Revenue" for "State Tax Commission" in (a), (c) and (e); substituted "department" for "State Tax Commission" in (v), (y) and (cc); and made a minor stylistic change.

## JUDICIAL DECISIONS

**1. In general.**

Mississippi Motor Vehicle and Manufactured Housing Title Law did not apply to a dispute regarding the payment of several loans secured by trucks because the Uniform Commercial Code's exclusions under former Miss. Code Ann. § 75-9-104(c) (now Miss. Code Ann. § 75-9-109(d)(2)) did not cover automobiles. Trustmark Nat'l Bank v. Barnard, 930 So. 2d 1281 (Miss. Ct. App. 2006).

## ATTORNEY GENERAL OPINIONS

Question whether a 4-wheel recreational vehicle, such as a Honda, fits the category of implement of husbandry is a question of fact and would be answered by

determining the design and adaption of the vehicle. Magee, July 22, 2005, A.G. Op. 05-0344.

If a John Deere Gator is an implement of husbandry it may be driven temporarily on the streets of a city. If not, it may be used for general maintenance, but not driven on the streets. Graves, Apr. 14, 2006, A.G. Op. 06-0110.

## § 63-21-9. Requirement of certificate of title.

(1) Except as provided in Section 63-21-11, every owner of a motor vehicle as defined in this chapter, which is in this state and which is manufactured or assembled after July 1, 1969, or which is the subject of first sale for use after July 1, 1969, and every owner of a manufactured home as defined in this chapter, which is in this state and which is manufactured or assembled after July 1, 1999, or which is the subject of first sale for use after July 1, 1999, shall make application to the State Tax Commission for a certificate of title with the following exceptions:

(a) Voluntary application for title may be made for any model motor vehicle which is in this state after July 1, 1969, and for any model manufactured home or mobile home which is in this state after July 1, 1999, and any person bringing a motor vehicle, manufactured home or mobile home into this state from a state which requires titling shall make application for title to the State Tax Commission within thirty (30) days thereafter.

(b) After July 1, 1969, any dealer, acting for himself, or another, who sells, trades or otherwise transfers any new or used vehicle as defined in this chapter, and after July 1, 1999, any dealer, acting for himself, or another, who sells, trades or otherwise transfers any new or used manufactured home or mobile home as defined in this chapter, or any designated agent, shall furnish to the purchaser or transferee, without charge for either application or certificate of title, an application for title of said vehicle, manufactured home or mobile home and cause to be forwarded to the State Tax Commission any and all documents required by the commission to issue certificate of title to the purchaser or transferee. The purchaser or transferee may then use the duplicate application for title as a permit to operate vehicle as provided in Section 63-21-67, until certificate of title is received.

(2)(a) Voluntary application for title may be made for any model all-terrain vehicle which is in this state.

(b) A dealer who sells, trades or otherwise transfers any new or used all-terrain vehicles as defined in this chapter, may furnish to the purchaser or transferee, without charge for either application or certificate of title, an application for title of said vehicle, and cause to be forwarded to the State Tax Commission any and all documents required by the commission to issue certificate of title to the purchaser or transferee.

(3) Any dealer, acting for himself or another who sells, trades or otherwise transfers any vehicle, manufactured home or mobile home required to be titled under this chapter who does not comply with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding Five Hundred Dollars ($500.00).

**SOURCES: Codes, 1942, § 8125-24; Laws, 1968, ch. 531, § 4; Laws, 1970, ch. 483, § 1; Laws, 1979, ch. 333; Laws, 1999, ch. 556, § 4; Laws, 2005, ch. 335, § 2, eff from and after July 1, 2005.**

**Amendment Notes** — The 2005 amendment inserted (2); and designated the formerly undesignated paragraphs as (1) and (3).

## § 63-21-11. Exceptions to requirement of certificate of title.

(1) No certificate of title need be obtained for:

(a) A vehicle, manufactured home or mobile home owned by the United States or any agency thereof;

(b) A vehicle, manufactured home or mobile home owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing;

(c) A vehicle, manufactured home or mobile home owned by a nonresident of this state and not required by law to be registered in this state;

(d) A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state;

(e) A vehicle moved solely by animal power;

(f) An implement of husbandry;

(g) Special mobile equipment;

(h) A pole trailer;

(i) Utility trailers of less than five thousand (5,000) pounds gross vehicle weight.

(2) Nothing in this section shall prohibit the issuance of a certificate of title to the nonresident owner of an all-terrain vehicle that is purchased in this state.

**SOURCES: Codes, 1942, § 8125-25; Laws, 1968, ch. 531, § 5; Laws, 1987, ch. 338, § 1; Laws, 1999, ch. 556, § 5; Laws, 2005, ch. 335, § 3, eff from and after July 1, 2005.**

**Amendment Notes** — The 2005 amendment added (2).

## § 63-21-15. Application for certificate of title.

(1) The application for the certificate of title of a vehicle, manufactured home or mobile home in this state shall be made by the owner to a designated agent, on the form the State Tax Commission prescribes, and shall contain or be accompanied by the following, if applicable:

(a) The name, driver's license number, if the owner has been issued a driver's license, current residence and mailing address of the owner;

(b)(i) If a vehicle, a description of the vehicle, including the following data: year, make, model, vehicle identification number, type of body, the number of cylinders, odometer reading at the time of application, and whether new or used; and

(ii) If a manufactured home or mobile home, a description of the manufactured home or mobile home, including the following data: year, make, model number, serial number and whether new or used;

(c) The date of purchase by applicant, the name and address of the person from whom the vehicle, manufactured home or mobile home was acquired, and the names and addresses of any lienholders in the order of their priority and the dates of their security agreements;

(d) In connection with the transfer of ownership of a manufactured home or mobile home sold by a sheriff's bill of sale, a copy of the sheriff's bill of sale;

(e)(i) An odometer disclosure statement made by the transferor of a motor vehicle. The statement shall read:

"Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fine and/or imprisonment.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one (1) of the following statements is checked:

_____ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

_____ (2) I hereby certify that the odometer reading is not the actual mileage. WARNING — ODOMETER DISCREPANCY!"

(ii) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title, which form shall be prescribed and furnished by the State Tax Commission. This written disclosure must be signed by the transferor and transferee, including the printed name of both parties.

Notwithstanding the requirements above, the following exemptions as to odometer disclosure shall be in effect:

1. A vehicle having a gross vehicle weight rating of more than sixteen thousand (16,000) pounds.

2. A vehicle that is not self-propelled.

3. A vehicle that is ten (10) years old or older.

4. A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

5. A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(iii) Any person who knowingly gives a false statement concerning the odometer reading on an odometer disclosure statement shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of up to One Thousand Dollars ($1,000.00) or imprisonment of up to one (1) year, or both, at the discretion of the court. These penalties shall be cumulative, supplemental and in addition to the penalties provided by any other law; and

(f) For previously used manufactured homes and mobile homes that previously have not been titled in this state or any other state, a disclosure statement shall be made by the owner of the manufactured home or mobile home applying for the certificate of title. That statement shall read:

"I state that the previously used manufactured home or mobile home owned by me for which I am applying for a certificate of title, to the best of my knowledge:

_____ (1) Has never been declared a total loss due to flood damage, fire damage, wind damage or other damage; or

_____ (2) Has previously been declared a total loss due to:

_____ (a) Collision;

_____ (b) Flood;

_____ (c) Fire;

_____ (d) Wind;

_____ (e) Other (please describe): _____."

(2) The application shall be accompanied by such evidence as the State Tax Commission reasonably requires to identify the vehicle, manufactured home or mobile home and to enable the State Tax Commission to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the vehicle, manufactured home or mobile home and whether the applicant is liable for a use tax as provided by Sections 27-67-1 through 27-67-33.

(3) If the application is for a vehicle, manufactured home or mobile home purchased from a dealer, it shall contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of his security agreement and it shall be signed by the dealer as well as the owner. The designated agent shall promptly mail or deliver the application to the State Tax Commission.

(4) If the application is for a new vehicle, manufactured home or mobile home, it shall contain the certified manufacturer's statement of origin showing proper assignments to the applicant and a copy of each security interest document.

(5) Each application shall contain or be accompanied by the certificate of a designated agent that the vehicle, manufactured home or mobile home has been physically inspected by him and that the vehicle identification number and descriptive data shown on the application, pursuant to the requirements of subsection (1) (b) of this section, are correct, and also that he has identified the person signing the application and witnessed the signature. If the application is to receive a clear title or a branded title for a vehicle for which a salvage certificate of title has been issued, the application shall be accompanied by a sworn affidavit that the vehicle complies with the requirements of this section, Section 63-21-39 and the regulations promulgated by the State Tax Commission under Section 63-21-39.

(6) If the application is for a first certificate of title on a vehicle, manufactured home or mobile home other than a new vehicle, manufactured home or mobile home, then the application shall conform with the require-

ments of this section except that in lieu of the manufacturer's statement of origin, the application shall be accompanied by a copy of the bill of sale of said motor vehicle, manufactured home or mobile home whereby the applicant claims title or in lieu thereof, in the case of a motor vehicle, certified copies of the last two (2) years' tag and tax receipts or in lieu thereof, in any case, such other information the State Tax Commission may reasonably require to identify the vehicle, manufactured home or mobile home and to enable the State Tax Commission to determine ownership of the vehicle, manufactured home or mobile home and the existence or nonexistence of security interest in it. If the application is for a vehicle, manufactured home or mobile home last previously registered in another state or country, the application shall also be accompanied by the certificate of title issued by the other state or country, if any, properly assigned.

(7) Every designated agent within this state shall, no later than the next business day after they are received by him, forward to the State Tax Commission by mail, postage prepaid, the originals of all applications received by him, together with such evidence of title as may have been delivered to him by the applicants.

(8) An application for certificate of title and information to be placed on an application for certificate of title may be transferred electronically as provided in Section 63-21-16.

(9) The State Tax Commission shall issue a certificate of title or any other document applied for under this chapter to the designated agent, owner or lienholder of the motor vehicle or of the manufactured home or mobile home, as appropriate, not more than thirty (30) days after the application and required fee prescribed under Section 63-21-63 or Section 63-21-64 are received unless the applicant requests expedited processing under subsection (10) of this section.

(10)(a) The State Tax Commission shall establish an expedited processing procedure for the receipt of applications and the issuance of certificates of title and any other documents issued under this chapter, except a replacement certificate of title as provided under Section 63-21-27(2), for motor vehicles and for manufactured homes or mobile homes. Any designated agent, lienholder or owner requesting the issuance of any such document, at his or her option, shall receive such expedited processing upon payment of a fee in the amount of Thirty Dollars ($30.00). Such fee shall be in addition to the fees applicable to the issuance of any such documents under Section 63-21-63 and Section 63-21-64.

(b) When expedited title processing is requested, the applicable fees are paid and all documents and information necessary for the Tax Commission to issue the certificate of title or other documents applied for are received by the commission, then the commission shall complete processing of the application and issue the title or document applied for within seventy-two (72) hours of the time of receipt, excluding weekends and holidays.

**SOURCES: Codes, 1942, § 8125-27; Laws, 1968, ch. 531, § 7; Laws, 1986, ch. 328, § 2; Laws, 1989, ch. 369, § 2; Laws, 1991, ch. 575, § 1; Laws, 1996, ch. 539, § 3; Laws, 1999, ch. 556, § 6; Laws, 2004, ch. 557, § 1; Laws, 2006, ch. 466, § 2; Laws, 2006, ch. 563, § 8, eff from and after July 1, 2006.**

**Joint Legislative Committee Note —** Section 2 of ch. 466, Laws of 2006, effective from and after passage (approved March 9, 2006), amended this section. Section 8 of ch. 563, Laws of 2006, effective from and after July 1, 2006 (approved March 23, 2006), also amended this section. As set out above, this section reflects the language of Section 8 of ch. 563, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Amendment Notes —** The first 2006 amendment (ch. 466), inserted "or a branded title" following "receive a clear title" in the second sentence of (5).

The second 2006 amendment (ch. 563) rewrote (1)(a).

JUDICIAL DECISIONS

**1. In general.**

Chancellor's order and the execution on a truck in partial satisfaction of the judgment in favor of a mall security company that brought a suit for payment of prereceivership services was proper because the title to the truck reflected no lienholder. Thus, when the security company obtained its judgment against the mall, it became a judgment creditor with a priority claim over other creditors to the truck. Lend Lease Asset Mgmt., L.P. v. Cobra Sec., Inc., 912 So. 2d 471 (Miss. 2005).

## § 63-21-38. Requirements of scrap metal processor or used motor vehicle parts dealer when purchasing any vehicle or scrap vehicle.

Should a scrap metal processor or used motor vehicle parts dealer be presented the certificate of title or vehicle license plate for any vehicle or scrap vehicle purchased, that scrap metal processor or used motor vehicle parts dealer shall mail or deliver the same to the Department of Revenue as required by law. In lieu of a certificate of title, an affidavit in accordance with the provisions of Section 63-21-39(1) shall be obtained by a scrap metal processor. All other requirements of Section 63-21-39(1) shall be complied with and any other rules promulgated according to that section.

**SOURCES: Laws, 2011, ch. 451, § 2, eff from and after July 1, 2011.**

## § 63-21-39. Procedure where vehicle scrapped, dismantled or destroyed; procedure where title for vehicle being transferred to used motor vehicle parts dealer or scrap metal processor is unavailable; obtaining title on vehicle with salvage certificate of title; Salvage Certificate of Title Fund; regulations.

(1)(a) An owner who scraps, dismantles or destroys a vehicle and a person who purchases a vehicle as scrap or to be dismantled or destroyed shall indicate same on the back of the certificate of title and shall immediately cause the certificate of title and any other documents required by the Department of Revenue to be mailed or delivered to the Department of Revenue for cancellation. A certificate of title of the vehicle shall not again be issued except upon application containing the information the Department of Revenue requires, accompanied by a certificate of inspection in the form and content specified in Section 63-21-15(5) and proof of payment of a fee as provided in subsection (2) of this section.

(b) Notwithstanding any other provision of this chapter to the contrary, if the owner or authorized agent of the owner has not obtained a title in his or her name for the vehicle to be transferred, has lost the title for the vehicle to be transferred, or has returned the title to the Department of Revenue in accordance with Section 63-21-39(1)(a), he or she may sign a statement swearing that, in addition to the foregoing conditions, the vehicle is at least ten (10) model years old. The statement described in this paragraph may be used only to transfer such a vehicle to a licensed used motor vehicle parts dealer or scrap metal processor. The department shall promulgate a form for the statement which shall include, but not be limited to:

(i) A description of the vehicle including the year, make, model and vehicle identification number;

(ii) The name, address, and driver's license number of the owner;

(iii) A certification that the owner:

1. Never obtained a title to the vehicle in his or her name; or
2. Was issued a title for the vehicle, but the title was lost or stolen;

(iv) A certification that the vehicle:

1. Is at least ten (10) model years old; and
2. Is not subject to any secured interest or lien;

(v) The owner's signature and the date of the transaction;

(vi) The name and address of the business acquiring the vehicle;

(vii) The National Motor Vehicle Title Information System identification number; and

(viii) The business agent's signature and date along with a printed name and title if the agent is signing on behalf of a corporation.

(c) The used motor vehicle parts dealer or scrap metal processor shall mail or otherwise deliver the statement required under paragraph (b) of this subsection (1) to the Department of Revenue within seventy-two (72) hours of the completion of the transaction, requesting that the department cancel

the Mississippi certificate of title and registration. In lieu of mailing, the used motor vehicle parts dealer or scrap metal processor may electronically submit the information contained in the statement via an Internet-based system to be developed by the department.

(d) The used motor vehicle parts dealer or scrap metal processor shall retain a copy of all documents required by this section for a period of two (2) years from the date of the transaction.

(2) For the purpose of requesting a clear title or a branded title on a vehicle with a salvage certificate of title, every owner of a vehicle that has been issued a salvage certificate of title in this state or any other state which has been restored in this state to its operating condition which existed prior to the event which caused the salvage certificate of title to be issued shall make application to the Department of Revenue, accompanied by a certificate of inspection issued by the Department of Public Safety in the form and content specified in Section 63-21-15(5) and the payment of a fee of Seventy-five Dollars ($75.00) for each motor vehicle for which a certificate of inspection is issued. All such monies shall be collected by the Department of Public Safety and paid to the State Treasurer for deposit in a special fund that is hereby created in the State Treasury to be known as the "Salvage Certificate of Title Fund." Monies in the special fund may be expended by the Department of Public Safety, upon appropriation by the Legislature. The Department of Revenue shall establish by regulation the minimum requirements by which a vehicle which has been issued a salvage certificate of title may be issued a clear title.

(3) Before a clear title or a branded title may be issued for a vehicle for which a salvage certificate of title has been issued, the applicant shall submit, by hand delivery or mail, such documents and information to the Department of Public Safety as the department may require for the purpose of determining if the vehicle complies with the requirements of this section and all applicable regulations promulgated by the Commissioner of Public Safety and the Department of Revenue. The Department of Public Safety also may require that an applicant bring a vehicle for which application for a clear title or a branded title is being made to a Highway Patrol facility for a visual inspection whenever the department deems that a visual inspection is necessary or advisable. Nothing in this section shall be construed to prohibit inspectors of the Mississippi Highway Patrol from conducting on-site inspections and investigations of motor vehicle rebuilders or motor vehicle repair businesses to determine if such businesses are in compliance with all applicable laws relating to the motor vehicle title laws of this state and regulations promulgated by the Commissioner of Public Safety and the Department of Revenue.

**SOURCES: Codes, 1942, § 8125-39; Laws, 1968, ch. 531, § 19; Laws, 1991, ch. 575, § 3; Laws, 2006, ch. 466, § 1; Laws, 2011, ch. 451, § 3, eff from and after July 1, 2011.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in a statutory reference in (1)(b) by substituting "any other provision of this chapter" for "any other provision of this article." The Joint Committee ratified the correction at its July 13, 2011, meeting.

**Amendment Notes** — The 2006 amendment deleted "if a clear title is to be issued" from the end of (1); in the first sentence in (2), inserted "or a branded title" following "requesting a clear title" and "issued by the Department of Public Safety" following "accompanied by a certificate of inspection," and added "for each motor vehicle for which a certificate of inspection is issued"; and added (3).

The 2011 amendment added (1)(b), (c), and (d); and substituted "Department of Revenue" for "State Tax Commission" throughout the section."

## § 63-21-61. Repealed.

Repealed by Laws, 2005, ch. 499, § 36 effective from and after July 1, 2005.

[Codes, 1942, § 8125-49; Laws, 1968, ch. 531, § 29; Laws, 1999, ch. 556, § 29, eff from and after July 1, 1999]

**Editor's Note** — Former § 63-21-61 provided for hearings and appeals from certain actions of the State Tax Commission.

## § 63-21-63. Schedule of fees.

There shall be paid to the Department of Revenue for issuing and processing documents required by this chapter, fees for motor vehicles according to the following schedule:

(a) Each application for certificate of title issued under Section 63-21-9(2) ..... $ 9.00

(b) Each application for certificate of title not issued under Section 63-21-9(2) ..... 9.00

(c) Each application for replacement or corrected certificate of title ..... 9.00

(d) Each suspension or revocation of certificate of title ..... 9.00

(e) Each notice of security interest ..... 9.00

(f) Each release of security interest ..... 9.00

(g) Each assignment by lienholder ..... 9.00

(h) Each application for information as to the status of the title of a vehicle ..... 9.00

The designated agent may add the sum of One Dollar ($1.00) to each document processed for which a fee is charged to be retained as his commission for services rendered. All other fees collected shall be remitted to the department.

If more than one (1) transaction is involved in any application on a single vehicle and if supported by all required documents, the fee charged by the department and by the designated agent for processing and issuing shall be considered as only one (1) transaction.

**SOURCES: Codes, 1942, § 8125-53; Laws, 1968, ch. 531, § 33; Laws, 1980, ch. 427, § 2; Laws, 2001, ch. 596, § 68; Laws, 2005, ch. 335, § 4; Laws, 2010, ch. 496, § 1, eff from and after July 1, 2010.**

**Amendment Notes —** The 2005 amendment inserted "for motor vehicles" preceding "according to the following" in the introductory language; added (a) and redesignated former (1) through (7) as present (b) through (h); in (b), added "not issued under Section 63-21-9(2); and made minor stylistic changes.

The 2010 amendment, in the introductory paragraph, substituted "Department of Revenue" for "State Tax Commission"; in (a), substituted "$9.00" for "$8.00"; in (b) through (h), substituted "$9.00" for "$4.00"; and in the last two paragraphs, substituted "department" for "State Tax Commission."

## § 63-21-64. Fees paid to Department of Revenue for issuing and processing necessary documents.

There shall be paid to the Department of Revenue for issuing and processing documents required by this chapter, fees for manufactured homes or mobile homes according to the following schedule:

(a) Each application for certificate of title ..... $ 9.00

(b) Each application for replacement or corrected certificate of title ..... 9.00

(c) Each suspension or revocation of certificate of title ..... 9.00

(d) Each notice of security interest ..... 9.00

(e) Each release of security interest ..... 9.00

(f) Each assignment by lienholder ..... 9.00

(g) Each application for information as to the status of the title of a manufactured home or mobile home ..... 9.00

The designated agent may add the sum of One Dollar ($1.00) to each document processed for which a fee is charged to be retained as his commission for services rendered. All other fees collected shall be remitted to the department.

If more than one (1) transaction is involved in any application on a single manufactured home or mobile home and if supported by all required documents, the fee charged by the Tax Commission's designated agent for processing and issuing shall be considered as only one (1) transaction.

**SOURCES: Laws, 1999, ch. 556, § 32; Laws, 2010, ch. 496, § 2, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment substituted "Department of Revenue" for "State Tax Commission" in the introductory paragraph; increased the fees by $1.00 in (a) through (g); substituted "department" for "State Tax Commission" in the paragraph following (g); deleted the former next-to-last paragraph, which read: "For each fee collected according to the schedule provided in this section, Four Dollars ($4.00) of each such fee shall be paid to the State Tax Commission to defray the costs of the commission in processing and issuing such documents. The disposition of fees collected under this section shall be governed by the provisions of this section and not

by any other provisions of this chapter"; and made a minor stylistic change in the last paragraph.

## § 63-21-65. Disposition of fees.

The Department of Revenue shall deposit the fees collected under this chapter into a special fund that is created in the State Treasury to the credit of the department. As much of those fees as appropriated by the Legislature shall be used by the department to defray the cost of carrying out the duties of the department, including the maintenance of the automated statewide motor vehicle and manufactured housing registration system.

**SOURCES: Codes, 1942, § 8125-54; Laws, 1968, ch. 531, § 34; Laws, 1980, ch. 427, § 3; Laws, 1981, ch. 309, § 5; Laws, 1983, ch. 320, § 2; Laws, 1984, ch. 488, § 303; Laws, 1989, ch. 393, § 1; Laws, 1999, ch. 556, § 30; Laws, 2010, ch. 496, § 3, eff from and after July 1, 2010.**

**Amendment Notes —** The 2010 amendment rewrote the section, which formerly read: "Except as provided in Section 63-21-64, the State Tax Commission shall pay into the General Fund the fees collected under this chapter. As much of such fees as authorized by the Legislature shall be used by the State Tax Commission to defray the cost of carrying out the duties of the State Tax Commission including the maintenance of the automated statewide motor vehicle and manufactured housing registration system."

## § 63-21-75. Enforcement of chapter.

The Department of Revenue is charged with the enforcement of the provisions of this chapter and the department is hereby authorized and empowered to call upon any and all law enforcement agencies and officers of this state for such assistance as it may deem necessary in order to assure such enforcement. It shall be the duty of such law enforcement agencies and officers to render such assistance to the Department of Revenue when called upon by the department to so do.

**SOURCES: Codes, 1942, § 8125-61; Laws, 1968, ch. 531, § 41; Laws, 2001, ch. 596, § 69; Laws, 2009, ch. 492, § 125, eff from and after July 1, 2010.**

**Editor's Note —** Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission

on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

**Amendment Notes —** The 2009 amendment, effective from and after July 1, 2010, substituted "Department of Revenue" for "State Tax Commission" both times it appears, and "department" for "commission" both times it appears.

**Cross References —** Department of revenue generally, see §§ 27-3-1 et seq.

## CHAPTER 23

## Abandoned Motor Vehicles

### § 63-23-7. Determination of status of vehicle under title law prior to disposition of vehicle.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

## CHAPTER 25

## Motor Vehicle Chop Shop, Stolen and Altered Property Act

SEC.
63-25-13. Repealed.

### § 63-25-9. Forfeiture of property.

**Editor's Note —** Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

### § 63-25-13. Scrap processors to maintain records identifying owners and vehicle identification numbers; law enforcement agencies authorized to inspect records and vehicles; penalties.

Repealed by Laws, 2011, ch. 451, § 4, effective July 1, 2011.

§ 63-25-13. [Laws, 2000, ch. 495, § 2, eff from and after July 1, 2000.]

**Editor's Note —** Former § 63-25-13 required scrap processors to maintain records identifying owners and vehicle identification numbers, authorized law enforcement agencies to inspect the records and vehicles and provided penalties for violations of the section.

## CHAPTER 29

## Mississippi Vehicle Protection Product Act



### § 63-29-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Vehicle Protection Product Act."

**SOURCES: Laws, 2007, ch. 486, § 1, eff from and after July 1, 2007.**

### § 63-29-3. Definitions.

As used in this section:

(a) "Administrator" means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

(b) "Motor Vehicle Commission" means the Mississippi Motor Vehicle Commission.

(c) "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees and mechanical inspection fees.

(d)(i) "Vehicle protection product" means a vehicle protection device, system or service that:

1. Is installed on or applied to a vehicle;

2. Is designed to prevent loss or damage to a vehicle from a specific cause; and

3. Includes a written warranty.

(ii) Any product offered without a warranty shall not be considered a vehicle protection product and shall not be covered by the provisions of this chapter.

(e) The term "vehicle protection device, system or service" shall include, without limitation, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches and electronic, radio and satellite tracking devices.

(f) "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

(g) "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. "Warrantor" does not include an authorized insurer.

(h) "Warranty holder" means the person who purchases a vehicle protection product or who is a permitted transferee.

(i) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

**SOURCES: Laws, 2007, ch. 486, § 2, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

## § 63-29-5. Scope; exemptions.

(1) No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor and administrator, if any, comply with the provisions of this chapter.

(2) A vehicle protection product warranty provided or sold in compliance with this chapter is not a contract of insurance.

(3) Warranties, indemnity agreements and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of this chapter.

**SOURCES: Laws, 2007, ch. 486, § 3, eff from and after July 1, 2007.**

## § 63-29-7. Registration and filing requirements of warrantors; fees; renewal of registration.

(1) A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the Motor Vehicle Commission on a form prescribed by the Motor Vehicle Commission.

(2) Warrantor registration records shall be filed annually and shall be updated by the warrantor within thirty (30) days of any change. The registration records shall contain the following information:

(a) The warrantor's name, any other names under which the warrantor does business in the state, principal office address and telephone number;

(b) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;

(c) The name, address and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state;

(d) A copy of the warranty reimbursement insurance policy or policies or other financial information required by Section 63-29-11 below;

(e) A copy of each warranty the warrantor proposes to use in this state; and

(f) A statement indicating under which provision of Section 63-29-9 that the warrantor qualifies to do business in this state as a warrantor.

(3) The Motor Vehicle Commission may charge each registrant a reasonable fee to offset the cost of processing the registration and maintaining the records. Such fee shall be set by the Motor Vehicle Commission in an amount not to exceed the amount necessary to defray the Motor Vehicle Commission's expenses in administering this chapter.

(4) If a registrant fails to register by the renewal deadline, the Motor Vehicle Commission shall give the registrant written notice of the failure and the registrant will have thirty (30) days to complete the renewal of the registration before the registration is revoked. Revocation for failure to renew a registration does not require any additional notice or a hearing.

(5) An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this state to sell vehicle protection products.

**SOURCES: Laws, 2007, ch. 486, § 4, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see § 63-17-51 et seq.

## § 63-29-9. Warrantor required to prove financial solvency or be insured under warranty insurance policy meeting certain conditions.

(1) No vehicle protection product shall be sold or offered for sale in this state unless the vehicle protection product warrantor can prove financial

solvency as provided under subsection (2) of this section or is insured under a warranty insurance policy meeting the following conditions in order to ensure adequate performance under the warranty:

(a) The warranty reimbursement insurance policy is issued by an insurer authorized to do business in this state and provides that the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty;

(b) A true and correct copy of the warranty reimbursement insurance policy has been filed with the Motor Vehicle Commission by the warrantor; and

(c) The policy contains the provisions required by Section 63-29-11.

(2) As an alternative to warranty reimbursement insurance under subsection (1) of this section, the vehicle's protection warrantor or its parent company must:

(a) Maintain a net worth of stockholders' equity of Fifty Million Dollars ($50,000,000.00); and

(b) Provide the Motor Vehicle Commission with a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the Securities Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities Exchange Commission, a copy of the warrantor's or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or its parent company of at least Fifty Million Dollars ($50,000,000.00). If the warrantor's parent company's Form 10-K, Form 20-F or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to the warranties issued by the warrantor in this state. The audited financial statements filed pursuant to this subsection shall be exempt from public disclosure under the Mississippi Public Records Act of 1983.

**SOURCES: Laws, 2007, ch. 486, § 5, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq. Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

## § 63-29-11. Warranty reimbursement insurance policy requirements.

No warranty reimbursement insurance policy shall be issued, sold or offered for sale in this state unless the policy meets the following conditions:

(a) The policy states that the issuer of the policy will reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay, or will provide all service that the warrantor is legally obligated to perform according to the warrantor's

contractual obligations under the provisions of the insured warranties sold by the warrantor;

(b) The policy states that in the event that payment due under the terms of the warranty is not provided by the warrantor within sixty (60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement;

(c) The policy provides that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer; and

(d) The policy has the following provisions regarding cancellation of the policy:

(i) The issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the Motor Vehicle Commission and each insured warrantor;

(ii) The cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation; and

(iii) In the event an insurer cancels a policy that a warrantor has filed with the Motor Vehicle Commission, the warrantor shall do either of the following:

1. File a copy of a new policy with the Motor Vehicle Commission, before the termination of the prior policy, provided that there is no lapse in coverage following the termination of the prior policy; or

2. Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the Motor Vehicle Commission.

**SOURCES: Laws, 2007, ch. 486, § 6, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

## § 63-29-13. Disclosure to warranty holder; contents.

(1) Every vehicle protection product warranty shall be written in clear, understandable language and shall be printed or typed in an easy-to-read point size and font and shall not be sold or offered for sale in the state unless the warranty:

(a) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance.";

(b) Identifies the warrantor, the administrator (if any), the seller and the warranty holder;

(c) Sets forth the procedure for making a claim, including a telephone number;

(d) Sets forth the total purchase price and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale;

(e) Sets forth any terms, restrictions or conditions governing transferability of the warranty, if any;

(f) Conspicuously sets forth all of the obligations and duties of the warranty holder such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair or other similar requirements, if any;

(g) Conspicuously states the existence of a deductible amount, if any;

(h) Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance and any limitations, exceptions or exclusions;

(i) Sets forth the conditions on which substitution will be allowed;

(j) Conspicuously states that the obligations of the warrantor to the warranty holder are insured under a warranty reimbursement insurance policy;

(k) Conspicuously states that, in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty (60) days after proof of loss has been filed with the warrantor; and

(*l*) Conspicuously states the name and address of the issuer of the warranty reimbursement insurance policy. This information need not be preprinted on the warranty form but may be stamped on the warranty.

(2) At the time of sale, the seller or warrantor shall provide to the purchaser:

(a) A copy of the vehicle protection product warranty; or

(b) A receipt or other written evidence of the purchase of the vehicle protection product and a copy of the warranty within thirty (30) days of the date of purchase.

**SOURCES: Laws, 2007, ch. 486, § 7, eff from and after July 1, 2007.**

## § 63-29-15. Disclosure of terms and conditions governing cancellation of sale and warranty; cancellation of warranty only under certain conditions.

(1) No vehicle protection product may be sold or offered for sale in this state unless the vehicle protection product warranty clearly states the terms and conditions governing the cancellation of the sale and warranty, if any.

(2) The warrantor may only cancel the warranty if the warranty holder does any of the following:

(a) Fails to pay for the vehicle protection product;

(b) Makes a material misrepresentation to the seller or warrantor;

(c) Commits fraud; or

(d) Substantially breaches the warranty holder's duties under the warranty.

(3) A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at the last address of the warranty holder in the warrantor's records at least thirty (30) days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

**SOURCES: Laws, 2007, ch. 486, § 8, eff from and after July 1, 2007.**

## § 63-29-17. Prohibited acts of warrantors.

(1) Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts or literature the words "insurance," "casualty," "surety," "mutual" or any other word that is descriptive of the insurance, casualty or surety business, or that is deceptively similar to the name or description of any insurance or surety corporation or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or a similar word in the warrantor's name.

(2) A vehicle protection product warrantor shall not make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a vehicle protection product.

(3) A vehicle protection product warrantor shall not permit or cause the omission of any material statement in connection with the sale, offer to sell or advertisement of a vehicle protection product.

(4) A vehicle protection product warrantor shall not make, permit or cause any false or misleading statements, either oral or written, about the performance required or payments that may be available under the vehicle protection product warranty.

(5) A vehicle protection product warrantor shall not make, permit or cause any statement or practice that has the effect of creating or maintaining a fraud.

(6) A vehicle protection product seller or warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

**SOURCES: Laws, 2007, ch. 486, § 9, eff from and after July 1, 2007.**

## § 63-29-19. Record keeping; contents of warrantor's accounts, books, records.

(1) All vehicle protection product warrantors shall keep accurate accounts, books and records concerning transactions regulated under this chapter.

(2) A vehicle protection product warrantor's accounts, books and records shall include:

(a) Copies of all vehicle protection product warranties;

(b) The name and address of each warranty holder; and

(c) The dates, amounts and descriptions of all receipts, claims and expenditures.

(3) A vehicle protection product warrantor shall retain all required accounts, books and records pertaining to each warranty holder for at least two (2) years after the specified period of coverage has expired. A warrantor discontinuing business in the state shall maintain its records until it furnishes the Motor Vehicle Commission satisfactory proof that it has discharged all obligations to warranty holders in this state.

(4) Vehicle protection product warrantors shall make all accounts, books and records concerning transactions regulated under this chapter available to the Motor Vehicle Commission for the purpose of examination.

**SOURCES: Laws, 2007, ch. 486, § 10, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

## § 63-29-21. Examination of warrantors by Motor Vehicle Commission; enforcement of and penalties for violations of this chapter.

(1)(a) The Motor Vehicle Commission may conduct examinations of warrantors, administrators or other persons to enforce this chapter and protect warranty holders in this state. Upon request of the Motor Vehicle Commission, a warrantor shall make available to the Motor Vehicle Commission all accounts, books and records concerning vehicle protection products sold by the warrantor that are necessary to enable the Motor Vehicle Commission to reasonably determine compliance or noncompliance with this chapter.

(b) Any person or entity examined shall pay any and all appropriate and reasonable costs incurred by the Motor Vehicle Commission during the examination, including, but not limited to, the compensation of such experts, actuaries, examiners or other persons as may be contracted for by the Motor Vehicle Commission or the Motor Vehicle Commission's designated appointee for the purpose of assisting in the examination. Such compensation shall be fixed at a reasonable amount commensurate with usual compensation for like services and shall be contracted for in accordance with applicable state contracting procedures, if applicable.

(2) The Motor Vehicle Commission may take action that is necessary or appropriate to enforce the provisions of this chapter and the Motor Vehicle Commission's rules and orders and to protect warranty holders in this state. If a person or entity violates this chapter and the Motor Vehicle Commission reasonably believes such violation threatens to cause irreparable loss or injury to the property or business of any person or company located in this state, the Motor Vehicle Commission may:

(a) Issue an order directed to that warrantor to cease and desist from engaging in further acts, practices or transactions that are causing the conduct;

(b) Issue an order prohibiting that warrantor from selling or offering for sale vehicle protection products in violation of this chapter;

(c) Issue an order imposing a civil penalty on that warrantor; or

(d) Issue any combination of paragraphs (a) through (c) of this subsection, as applicable.

(3) The Motor Vehicle Commission may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this chapter or of the Motor Vehicle Commission's orders or rules. An action filed under this section also may seek restitution on behalf of persons aggrieved by a violation of this chapter or orders or rule of the Motor Vehicle Commission.

(4) A person or entity who is found to have violated this chapter or orders or rules of the Motor Vehicle Commission may be ordered to pay to the Motor Vehicle Commission a civil penalty in an amount, determined by the Motor Vehicle Commission, of not more than Five Hundred Dollars ($500.00) per violation and not more than Ten Thousand Dollars ($10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action or practice, irrespective of the number of times the conduct, action or practice is determined to be a violation of this chapter.

**SOURCES: Laws, 2007, ch. 486, § 11, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

## § 63-29-23. Service of process.

(1) Any warrantor doing business in this state in accordance with this chapter shall be deemed to have appointed the Motor Vehicle Commission its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it.

(2) Any warrantor doing business in this state, operating without the authority provided by this chapter, shall be deemed to have appointed the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it.

**SOURCES: Laws, 2007, ch. 486, § 12, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq. General duties of the Secretary of State, see § 7-3-5.

## § 63-29-25. Rules and regulations.

The Motor Vehicle Commission may adopt rules and regulations to establish procedures for implementing the provisions of this chapter as are necessary. Such rules and regulations shall include disclosures for the benefit of the warranty holder, record keeping requirements, registration fees, penalties and procedures for public complaints. Such rules and regulations shall also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

**SOURCES: Laws, 2007, ch. 486, § 13, eff from and after July 1, 2007.**

**Cross References —** Motor Vehicle Commission generally, see §§ 63-17-51 et seq.

## § 63-29-27. Applicability of chapter.

This chapter applies to all vehicle protection products sold or offered for sale on or after July 1, 2007. The failure of any person to comply with this chapter before July 1, 2007, shall not be admissible in any court proceeding, administrative proceeding, arbitration or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

**SOURCES: Laws, 2007, ch. 486, § 14, eff from and after July 1, 2007.**

## § 63-29-29. Effect of chapter on existing vehicle protection product warranties.

The adoption of this chapter does not imply that a vehicle protection product warranty constituted insurance prior to July 1, 2007.

**SOURCES: Laws, 2007, ch. 486, § 15, eff from and after July 1, 2007.**

# CHAPTER 31

## Operating All-terrain Vehicles

SEC.



## § 63-31-1. Legislative intent.

It is the intent of the Legislature that all persons shall operate all-terrain vehicles in accordance with the vehicle manufacturer's guidelines.

**SOURCES: Laws, 2011, ch. 465, § 1, eff from and after July 1, 2011.**

## § 63-31-3. Requirements to operate off-road vehicle on public property; off-road vehicle safety course.

(1) No off-road vehicle shall be operated upon any public property by any person unless:

(a)(i) The person possesses a valid driver's license; or

(ii) The person possesses a certificate as provided under subsections (3) and (4) of this section.

(b) No person may operate any off-road vehicle upon any public property in this state unless each person under sixteen (16) years of age who is operating or riding on the off-road vehicle is wearing a crash helmet that complies with minimum guidelines established by the National Highway Traffic Safety Administration pursuant to the federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218) for helmets designed for use by motorcyclists.

(2) A violation of subsection (1) of this section is punishable by a fine of not less than Twenty-five Dollars ($25.00) nor more than Fifty Dollars ($50.00).

(3) Off-road vehicle safety courses shall be held by the Cooperative Extension Service using 4-H safety course materials and curricula, and shall be taught by instructors possessing qualifications approved by the Department of Public Safety. The Cooperative Extension Service shall issue a certificate to each person who satisfactorily completes the off-road vehicle safety course.

(4) Off-road vehicle safety courses may be held by any organization approved by the Department of Public Safety. Such organization shall issue a certificate to each person who satisfactorily completes the off-road vehicle safety course.

(5) For the purposes of this section:

(a) "Off-road vehicle" means any all-terrain vehicle or dirt bike.

(b) "All-terrain vehicle" or "ATV" means any motorized vehicle manufactured and designed exclusively for off-road use that is fifty (50) inches or less in width; has an unladen dry weight of six hundred (600) pounds or less; travels on three (3), four (4) or more low-pressure tires; has a seat designed to be straddled by the operator; and uses handlebars for steering control.

(c) "Dirt bike" means a motor-powered vehicle possessing two (2) or more tires, designed to travel over any terrain and capable of travelling off of paved roads, whether or not the vehicle may be operated legally on a public street.

(6) Nothing in this section shall be construed to authorize operation of an off-road vehicle on a public road or highway of this state.

**SOURCES: Laws, 2011, ch. 465, § 2; Laws, 2012, ch. 544, § 2, eff from and after July 1, 2012.**

**Editor's Note —** Laws of 2012, ch. 544, § 4 provides:

"SECTION 4. Section 2 of this act shall take effect and be in force from and after July 1, 2012, and the remainder of this act shall take effect and be in force from and after its passage."

**Amendment Notes —** The 2012 amendment, in (1) through (4), substituted "off-road vehicle" for "all-terrain vehicle"; in (1)(b), substituted "each person" for "unless all persons", inserted "who is"," substituted "federal Motor Vehicle Safety Standard No. 218 (49 CFR 571.218)" for "National Traffic and Motor Vehicle Safety Act of 1966"; rewrote (5), which read: "For the purposes of this section, the term "all-terrain vehicle" or "ATV" means any motorized vehicle manufactured and designed exclusively for off-road use that is fifty (50) inches or less in width, has an unladen dry weight of six hundred (600) pounds or less, travels on three (3), four (4) or more low-pressure tires, has a seat designed to be straddled by the operator and uses handlebars for steering control"; and added (6).

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